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STATE OF NORTH CAROLINA

SESSION LAWS AND RESOLUTIONS

PASSED BY THE

1991 GENERAL ASSEMBLY

AT ITS

REGULAR SESSION 1991

BEGINNING ON

WEDNESDAY, THE THIRTIETH DAY OF JANUARY, A.D. 1991

HELD IN THE CITY OF RALEIGH

ISSUED BY
SECRETARY OF STATE RUFUS L. EDMISTEN

PUBLISHED BY AUTHORITY

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STATE OF NORTH CAROLINA

PRESIDING OFFICERS OF THE 1991 GENERAL ASSEMBLY

JAMES C. GARDNER (R)	President of the Senate	Nash
DANIEL T. BLUE, JR.	Speaker of the House of Representatives	Wake

EXECUTIVE BRANCH

(Offices established by the Constitution, filled by election and comprising the Council of State)

JAMES G. MARTIN (R)	Governor	Mecklenburg
JAMES C. GARDNER (R)	Lieutenant Governor	Nash
RUFUS L. EDMISTEN	Secretary of State	Watauga
EDWARD RENFROW	Auditor	Johnston
HARLAN E. BOYLES	Treasurer	Wake
BOB R. ETHERIDGE	Superintendent of Public Instruction	Harnett
LACY H. THORNBURG	Attorney General	Jackson
JAMES A. GRAHAM	Commissioner of Agriculture	Rowan
JOHN C. BROOKS	Commissioner of Labor	Wake
JAMES A. LONG	Commissioner of Insurance	Alamance

The political affiliation of each legislator and member of the Council of State listed on this and the following pages is Democratic unless designated Republican by the abbreviation (R).

G.S. 147-16.1 authorizes publication of Executive Orders of the Governor in the Session Laws of North Carolina. Executive Orders from Governor Martin are carried in the appendix to this volume.

1991 GENERAL ASSEMBLY

SENATE OFFICERS

Name	*Position*	*Address*
JAMES C. GARDNER	President	Rocky Mount
HENSON P. BARNES	President Pro Tempore	Goldsboro
KENNETH C. ROYALL, JR.	Deputy President Pro Tempore	Durham
SYLVIA M. FINK	Principal Clerk	Raleigh
LEROY CLARK, JR	Reading Clerk	Wendell
GERDA B. PLEASANTS	Sergeant-at-Arms	Cary

SENATORS

District	Name	County	Address
1	MARC BASNIGHT	Dare	Manteo
2	FRANK W. BALLANCE	Warren	Warrenton
3	BEVERLY M. PERDUE	Pamlico	New Bern
4	B. TOMMY POLLARD	Onslow	Jacksonville
5	WENDELL MURPHY	Duplin	Rose Hill
6	R. L. MARTIN	Pitt	Bethel
7	FRANKLIN BLOCK	New Hanover	Wrightsville Beach
8	HENSON P. BARNES	Wayne	Goldsboro
9	ED N. WARREN	Pitt	Greenville
10	ROY A. COOPER III*	Nash	Rocky Mount
11	JAMES D. SPEED	Franklin	Louisburg
12	JOE B. RAYNOR	Cumberland	Fayetteville
12	LURA S. TALLY	Cumberland	Fayetteville
13	KENNETH C. ROYALL, JR.	Durham	Durham
13	RALPH A. HUNT	Durham	Durham
14	JOSEPH E. JOHNSON	Wake	Raleigh
14	WILLIAM W. STATON	Lee	Sanford
14	J. K. SHERRON, JR.	Wake	Raleigh
15	N. LEO DAUGHTRY (R)	Johnston	Smithfield
16	RUSSELL G. WALKER	Randolph	Asheboro
16	HOWARD N. LEE*	Orange	Chapel Hill
17	J. RICHARD CONDER	Richmond	Rockingham
17	AARON W. PLYLER	Union	Monroe
18	R. C. SOLES, JR	Columbus	Tabor City
19	ROBERT G. SHAW (R)	Guilford	Greensboro
20	MARVIN M. WARD	Forsyth	Winston-Salem
20	TED KAPLAN	Forsyth	Lewisville
21	GEORGE B. DANIEL	Caswell	Yanceyville
22	FLETCHER L. HARTSELL, JR.	Cabarrus	Concord
23	BETSY L. COCHRANE(R)	Davie	Advance
23	PAUL S. SMITH (R)	Rowan	Salisbury
24	WILLIAM D. GOLDSTON, JR.	Rockingham	Eden
24	A. P. SANDS III	Rockingham	Reidsville
25	JOHN CARTER (R)	Cleveland	Lincolnton
25	HELEN RHYNE MARVIN	Gaston	Gastonia
25	JAMES FORRESTER (R)	Gaston	Stanley
26	AUSTIN M. ALLRAN (R)	Catawba	Hickory
26	HOWARD F. BRYAN (R)	Iredell	Statesville
27	DONALD R. KINCAID (R)	Caldwell	Lenoir
27	DANIEL R. SIMPSON (R)	Burke	Morganton
28	HERBERT LEE HYDE	Buncombe	Asheville
28	DENNIS J. WINNER	Buncombe	Asheville
29	CLARK PLEXICO	Haywood	Hendersonville
29	ROBERT C. CARPENTER (R)	Macon	Franklin
30	DAVID RUSSELL PARNELL	Robeson	Parkton
31	WILLIAM N. MARTIN	Guilford	Greensboro
32	MARY P. SEYMOUR	Guilford	Greensboro
33	JAMES F. RICHARDSON	Mecklenburg	Charlotte
34	T. L. ODOM	Mecklenburg	Charlotte
35	JOHN GERALD BLACKMON	Mecklenburg	Charlotte

* Roy A. Cooper III was appointed by Governor Martin 2/20/91, to replace James E. Ezzell, Jr. who died 1/30/91.

HOUSE OFFICERS

Name	*Position*	*Address*
DANIEL T. BLUE, JR.	Speaker	Raleigh, Wake County
MARIE W. COLTON	Speaker Pro Tempore	Asheville, Buncombe County
GRACE A. COLLINS	Principal Clerk	Fuquay-Varina, Wake County
SAM J. BURROW, JR.	Reading Clerk	Cary, Wake County
LARRY P. EAGLES	Sergeant-at-Arms	Tarboro, Edgecombe County

REPRESENTATIVES

District	Name	County	Address
1	VERNON G. JAMES	Pasquotank	Elizabeth City
1	R. M. THOMPSON	Chowan	Edenton
2	HOWARD B. CHAPIN	Beaufort	Washington
3	GERALD L. ANDERSON	Craven	Bridgeton
3	DANIEL T. LILLEY	Lenoir	Kinston
3	WILLIAM L. WAINWRIGHT	Craven	Havelock
4	W. BRUCE ETHRIDGE	Onslow	Swansboro
4	ROBERT GRADY (R)	Onslow	Jacksonville
4	RONNIE SMITH	Onslow	Atlantic Beach
5	HOWARD J. HUNTER	Hertford	Murfreesboro
6	GENE ROGERS	Martin	Williamston
7	THOMAS C. HARDAWAY	Halifax	Enfield
8	JOE MAVRETIC	Edgecombe	Crisp
9	WALTER B. JONES, JR.	Pitt	Farmville
9	CHARLES MCLAWHORN	Pitt	Winterville
10	CHARLES W. ALBERTSON	Duplin	Beulaville
11	JOHN KERR	Wayne	Goldsboro
11	CAROLYN RUSSELL (R)	Wayne	Goldsboro
12	EDD NYE	Bladen	Elizabethtown
12	ED BOWEN	Sampson	Harrells
13	KAREN E. GOTTOVI	New Hanover	Wilmington
13	HARRY E. PAYNE	New Hanover	Wilmington
14	E. DAVID REDWINE	Brunswick	Shallotte
15	LEO MERCER	Columbus	Chadbourn
16	DANIEL H. DEVANE	Hoke	Raeford
16	JOHN CALVIN HASTY	Robeson	Maxton
16	ADOLPH DIAL	Robeson	Pembroke
17	MARY E. MCALLISTER	Cumberland	Fayetteville
17	NICK JERALDS	Cumberland	Fayetteville
18	R. D. BEARD	Cumberland	Fayetteville
18	JOHN W. HURLEY	Cumberland	Fayetteville
18	ALEX WARNER	Cumberland	Hope Mills
19	C. P. STEWART	Harnett	Lillington
19	DENNIS A. WICKER	Lee	Sanford
20	BILLY J. CREECH (R)	Johnston	Wilson Mills
20	BARNEY PAUL WOODARD	Johnston	Princeton
21	DANIEL T. BLUE, JR.	Wake	Raleigh
22	JOHN T. CHURCH	Vance	Henderson
22	JAMES W. CRAWFORD, JR.	Granville	Oxford
22	JAMES P. GREEN, SR.	Vance	Henderson
23	H. M. MICHAUX, JR.	Durham	Durham
23	GEORGE W. MILLER	Durham	Durham
23	PAUL LUEBKE	Durham	Durham
24	ANNE C. BARNES	Orange	Chapel Hill
24	JOE HACKNEY	Orange	Chapel Hill
25	J. FRED BOWMAN	Alamance	Burlington
25	BERTHA HOLT	Alamance	Burlington
25	SAM HUNT, III	Alamance	Burlington
25	PEGGY WILSON	Rockingham	Madison
26	HERMAN C. GIST	Guilford	Greensboro
27	JOANNE W. BOWIE (R)	Guilford	Greensboro
27	ALBERT S. LINEBERRY, SR.	Guilford	Greensboro
27	MAGGIE JEFFUS	Guilford	Greensboro
28	MARY JERRELL	Guilford	High Point
28	STEPHEN WOOD (R)	Guilford	High Point
29	MICHAEL P. DECKER (R)	Forsyth	Walkertown
30	ARLIE F. CULP (R)	Randolph	Ramseur

31	RICHARD T. MORGAN(R)	Moore	Pinehurst
32	DONALD DAWKINS	Richmond	Rockingham
33	FOYLE HIGHTOWER, JR.	Anson	Wadesboro
34	BOBBY H. BARBEE, SR. (R)	Stanly	Locust
34	CLAYTON LOFLIN (R)	Union	Monroe
34	COY C. PRIVETTE (R)	Cabarrus	Kannapolis
34	TIMOTHY TALLENT (R)	Cabarrus	Concord
35	CHARLOTTE A. GARDNER (R)	Rowan	Salisbury
35	BRADFORD V. LIGON (R)	Rowan	Salisbury
36	JAMES B. BLACK(R)	Mecklenburg	Matthews
37	JERRY C. DOCKHAM(R)	Davidson	Denton
37	JOE H. HEGE, JR. (R)	Davidson	Lexington
37	JULIA C. HOWARD (R)	Davie	Mocksville
38	HAROLD J. BRUBAKER (R)	Randolph	Asheboro
39	LYONS GRAY(R)	Forsyth	Winston-Salem
39	THERESA H. ESPOSITO (R)	Forsyth	Winston-Salem
39	FRANK E. RHODES (R)	Forsyth	Winston-Salem
40	DAVID H. DIAMONT	Surry	Pilot Mountain
40	JUDY HUNT	Watauga	Blowing Rock
40	WADE WILMOTH (R)	Watauga	Boone
41	JOHN WALTER BROWN (R)	Wilkes	Elkin
41	GEORGE M. HOLMES (R)	Yadkin	Yadkinville
42	J. WAYNE KAHL	Iredell	Union Grove
43	C. ROBERT BRAWLEY (R)	Iredell	Mooresville
44	J. VERNON ABERNETHY (R)	Gaston	Gastonia
44	W. W. DICKSON (R)	Gaston	Gastonia
44	JOHNATHAN L. RHYNE, JR. (R)	Lincoln	Lincolnton
44	JOHN R. GAMBLE	Lincoln	Lincolnton
45	DORIS ROGERS HUFFMAN (R)	Catawba	Newton
45	W. STINE ISENHOWER (R)	Catawba	Conover
46	CHARLES F. BUCHANAN (R)	Mitchell	Green Mountain
46	DAVID T. FLAHERTY, JR. (R)	Caldwell	Lenoir
46	GEORGE S. ROBINSON (R)	Caldwell	Lenoir
47	RAY C. FLETCHER	Burke	Valdese
48	JOHN J. HUNT	Cleveland	Lattimore
48	EDITH LUTZ	Cleveland	Lawndale
48	WILLIAM WITHROW	Cleveland	Ellenboro
49	ROBERT C. HUNTER	McDowell	Marion
50	LARRY T. JUSTUS (R)	Henderson	Hendersonville
51	MARIE W. COLTON	Buncombe	Asheville
51	NARVEL J. CRAWFORD	Buncombe	Asheville
51	GORDON H. GREENWOOD	Buncombe	Black Mountain
51	MARTIN NESBITT	Buncombe	Asheville
52	CHARLES M. BEALL	Haywood	Clyde
52	LISTON B. RAMSEY	Madison	Marshall
53	MARTY KIMSEY (R)	Macon	Franklin
54	JOHN B. MCLAUGHLIN	Mecklenburg	Newell
55	DAVID G. BALMER (R)	Mecklenburg	Charlotte
56	JO GRAHAM FOSTER	Mecklenburg	Charlotte
57	HARRY GRIMMER (R)	Mecklenburg	Matthews
58	RUTH M. EASTERLING	Mecklenburg	Charlotte
59	W. PETE CUNNINGHAM	Mecklenburg	Charlotte
60	HOWARD C. BARNHILL	Mecklenburg	Charlotte
61	ART POPE (R)	Wake	Raleigh
62	LARRY M. JORDAN	Wake	Apex
63	PEGGY STAMEY	Wake	Raleigh
64	BOB HENSLEY	Wake	Raleigh
65	AARON E. FUSSELL	Wake	Raleigh
66	ANNIE BROWN KENNEDY	Forsyth	Winston-Salem
67	WARREN OLDHAM	Forsyth	Winston-Salem
68	Incorporated into District No. 23 as ordered by the Federal Courts.		
69	Incorporated into District No. 23 as ordered by the Federal Courts.		
70	MILTON F. FITCH, JR.	Wilson	Wilson
71	WILLIAM W. LEWIS (R)	Wilson	Wilson
72	EDWARD L. MCGEE *	Nash	Rocky Mount

* Edward L. McGee was appointed by Governor Martin 3/7/91, to replace Roy A. Cooper, III who resigned effective 2/18/91.

LEGISLATIVE SERVICES COMMISSION

SENATE PRESIDENT PRO TEMPORE HENSON P. BARNES,
Cochairman

HOUSE SPEAKER DANIEL T. BLUE, JR., *Cochairman*

SEN. MARC BASNIGHT
SEN. BETSY L. COCHRANE
SEN. WILLIAM MARTIN
SEN. DAVID PARNELL
SEN. BEVERLY PERDUE
SEN. JOE RAYNOR

REP. J. V. ABERNETHY
REP. ROBERT J. HENSLEY, JR.
REP. MARY MCALLISTER
REP. HARRY PAYNE
REP. GEORGE ROBINSON
REP. DENNIS WICKER

LEGISLATIVE SERVICES STAFF DIRECTORS

GEORGE R. HALL, JR. ..... Legislative Administrative Officer
GERRY F. COHEN ..... Director of Legislative Drafting
THOMAS L. COVINGTON ..... Director of Fiscal Research
M. GLENN NEWKIRK ..... Director of Legislative Automated Systems
TERRENCE D. SULLIVAN ..... Director of Research
J. MICHAEL MINSHEW ..... Building Superintendent and Chief of Security

PREAMBLE

We, the people of the State of North Carolina, grateful to Almighty God, the Sovereign Ruler of Nations, for the preservation of the American Union and the existence of our civil, political and religious liberties, and acknowledging our dependence upon Him for the continuance of those blessings to us and our posterity, do, for the more certain security thereof and for the better government of this State, ordain and establish this Constitution.

ARTICLE I

DECLARATION OF RIGHTS

That the great, general, and essential principles of liberty and free government may be recognized and established, and that the relations of this State to the Union and government of the United States and those of the people of this State to the rest of the American people may be defined and affirmed, we do declare that:

Section 1. *The equality and rights of persons.* We hold it to be self-evident that all persons are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, the enjoyment of the fruits of their own labor, and the pursuit of happiness.

Sec. 2. *Sovereignty of the people.* All political power is vested in and derived from the people; all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole.

Sec. 3. *Internal government of the State.* The people of this State have the inherent, sole, and exclusive right of regulating the internal government and police thereof, and of altering or abolishing their Constitution and form of government whenever it may be necessary to their safety and happiness; but every such right shall be exercised in pursuance of law and consistently with the Constitution of the United States.

Sec. 4. *Secession prohibited.* This State shall ever remain a member of the American Union; the people thereof are part of the American Nation; there is no right on the part of this State to secede; and all attempts from whatever source or upon whatever pretext, to dissolve this Union or to sever this Nation, shall be resisted with the whole power of the State.

Sec. 5. *Allegiance to the United States.* Every citizen of this State owes paramount allegiance to the Constitution and government of the United States, and no law or ordinance of the State in contravention or subversion thereof can have any binding force.

Sec. 6. *Separation of powers.* The legislative, executive, and supreme judicial powers of the State government shall be forever separate and distinct from each other.

Sec. 7. *Suspending laws.* All power of suspending laws or the execution of laws by any authority, without the consent of the representatives of the people, is injurious to their rights and shall not be exercised.

Sec. 8. *Representation and taxation.* The people of this State shall not be taxed or made subject to the payment of any impost or duty without the consent of themselves or their representatives in the General Assembly, freely given.

Sec. 9. *Frequent elections.* For redress of grievances and for amending and strengthening the laws, elections shall be often held.

Sec. 10. *Free elections.* All elections shall be free.

Sec. 11. *Property qualifications.* As political rights and privileges are not dependent upon or modified by property, no property qualification shall affect the right to vote or hold office.

Sec. 12. *Right of assembly and petition.* The people have a right to assemble together to consult for their common good, to instruct their representatives, and to apply to the General Assembly for redress of grievances; but secret political societies are dangerous to the liberties of a free people and shall not be tolerated.

Sec. 13. *Religious liberty.* All persons have a natural and inalienable right to worship Almighty God according to the dictates of their own consciences, and no human authority shall, in any case whatever, control or interfere with the rights of conscience.

Sec. 14. *Freedom of speech and press.* Freedom of speech and of the press are two of the great bulwarks of liberty and therefore shall never be restrained, but every person shall be held responsible for their abuse.

Sec. 15. *Education.* The people have a right to the privilege of education, and it is the duty of the State to guard and maintain that right.

Sec. 16. *Ex post facto laws.* Retrospective laws, punishing acts committed before the existence of such laws and by them only declared criminal, are oppressive, unjust, and incompatible with liberty, and therefore no ex post facto law shall be enacted. No law taxing retrospectively sales, purchases, or other acts previously done shall be enacted.

Sec. 17. *Slavery and involuntary servitude.* Slavery is forever prohibited. Involuntary servitude, except as a punishment for crime whereof the parties have been adjudged guilty, is forever prohibited.

Sec. 18. *Court shall be open.* All courts shall be open; every person for an injury done him in his lands, goods, person, or reputation shall have remedy by due course of law; and right and justice shall be administered without favor, denial, or delay.

Sec. 19. *Law of the land; equal protection of the laws.* No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

Sec. 20. *General warrants.* General warrants, whereby any officer or other person may be commanded to search suspected places without evidence of the act committed, or to seize any person or persons not named, whose offense is not particularly described and supported by evidence, are dangerous to liberty and shall not be granted.

Sec. 21. *Inquiry into restraints on liberty.* Every person restrained of his liberty is entitled to a remedy to inquire into the lawfulness thereof, and to remove the restraint if unlawful, and that remedy shall not be denied or delayed. The privilege of the writ of habeas corpus shall not be suspended.

Sec. 22. *Modes of prosecution.* Except in misdemeanor cases initiated in the District Court Division, no person shall be put to answer any criminal charge but by indictment, presentment, or impeachment. But any person, when represented by counsel, may, under such regulations as the General Assembly shall prescribe, waive indictment in noncapital cases.

Sec. 23. *Rights of accused.* In all criminal prosecutions, every person charged with crime has the right to be informed of the accusation and to confront the accusers and witnesses with other testimony, and to have counsel for defense, and not be compelled to give self-incriminating evidence, or to pay costs, jail fees, or necessary witness fees of the defense, unless found guilty.

Sec. 24. *Right of jury trial in criminal cases.* No person shall be convicted of any crime but by the unanimous verdict of a jury in open court. The General Assembly may, however, provide for other means of trial for misdemeanors, with the right of appeal for trial de novo.

Sec. 25. *Right of jury trial in civil cases.* In all controversies at law respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and shall remain sacred and inviolable.

Sec. 26. *Jury service.* No person shall be excluded from jury service on account of sex, race, color, religion, or national origin.

Sec. 27. *Bail, fines, and punishments.* Excessive bail shall not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted.

Sec. 28. *Imprisonment for debt.* There shall be no imprisonment for debt in this State, except in cases of fraud.

Sec. 29. *Treason against the State.* Treason against the State shall consist only of levying war against it or adhering to its enemies by giving them aid and comfort. No person shall be convicted of treason unless on the testimony of two witnesses to the same overt act, or on confession in open court. No conviction of treason or attainder shall work corruption of blood or forfeiture.

Sec. 30. *Militia and the right to bear arms.* A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed; and, as standing armies in time of peace are dangerous to liberty, they shall not be maintained, and the military shall be kept under strict subordination to, and governed by, the civil power. Nothing herein shall justify the practice of carrying concealed weapons, or prevent the General Assembly from enacting penal statutes against that practice.

Sec. 31. *Quartering of soldiers.* No soldier shall in time of peace be quartered in any house without the consent of the owner, nor in time of war but in a manner prescribed by law.

Sec. 32. *Exclusive emoluments.* No person or set of persons is entitled to exclusive or separate emoluments or privileges from the community but in consideration of public services.

Sec. 33. *Hereditary emoluments and honors.* No hereditary emoluments, privileges, or honors shall be granted or conferred in this State.

Sec. 34. *Perpetuities and monopolies.* Perpetuities and monopolies are contrary to the genius of a free state and shall not be allowed.

Sec. 35. *Recurrence to fundamental principles.* A frequent recurrence to fundamental principles is absolutely necessary to preserve the blessings of liberty.

Sec. 36. *Other rights of the people.* The enumeration of rights in this Article shall not be construed to impair or deny others retained by the people.

ARTICLE II

LEGISLATIVE

Section 1. *Legislative power.* The legislative power of the State shall be vested in the General Assembly, which shall consist of a Senate and a House of Representatives.

Sec. 2. *Number of Senators.* The Senate shall be composed of 50 Senators, biennially chosen by ballot.

Sec. 3. *Senate districts; apportionment of Senators.* The Senators shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the senate districts and the apportionment of Senators among those districts, subject to the following requirements:

(1) Each Senator shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Senator represents being determined for this purpose by dividing the population of the District that he represents by the number of Senators apportioned to that district;

(2) Each senate district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a senate district;

(4) When established, the senate districts and the apportionment of Senators shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 4. *Number of Representatives.* The House of Representatives shall be composed of 120 Representatives, biennially chosen by ballot.

Sec. 5. *Representative districts; apportionment of Representatives.* The Representatives shall be elected from districts. The General Assembly, at the first regular session convening after the return of every decennial census of population taken by order of Congress, shall revise the representative districts and the apportionment of Representatives among those districts, subject to the following requirements:

(1) Each Representative shall represent, as nearly as may be, an equal number of inhabitants, the number of inhabitants that each Representative represents being determined for this purpose by dividing the population of the district that he represents by the number of Representatives apportioned to that district;

(2) Each representative district shall at all times consist of contiguous territory;

(3) No county shall be divided in the formation of a representative district;

(4) When established, the representative districts and the apportionment of Representatives shall remain unaltered until the return of another decennial census of population taken by order of Congress.

Sec. 6. *Qualifications for Senator.* Each Senator, at the time of his election, shall be not less than 25 years of age, shall be a qualified voter of the State, and shall have resided in the State as a citizen for two years and in the district for which he is chosen for one year immediately preceding his election.

Sec. 7. *Qualifications for Representative.* Each Representative, at the time of his election, shall be a qualified voter of the State, and shall have resided in the district for which he is chosen for one year immediately preceding his election.

Sec. 8. *Elections.* The election for members of the General Assembly shall be held for the respective districts in 1972 and every two years thereafter, at the places and on the day prescribed by law.

Sec. 9. *Term of office.* The term of office of Senators and Representatives shall commence on the first day of January next after their election.

Sec. 10. *Vacancies.* Every vacancy occurring in the membership of the General Assembly by reason of death, resignation, or other cause shall be filled in the manner prescribed by law.

Sec. 11. *Sessions.*

(1) *Regular Sessions.* The General Assembly shall meet in regular session in 1973 and every two years thereafter on the day prescribed by law. Neither house shall proceed upon public business unless a majority of all of its members are actually present.

(2) *Extra sessions on legislative call.* The President of the Senate and the Speaker of the House of Representatives shall convene the General Assembly in extra session by their joint proclamation upon receipt by the President of the Senate of written requests therefor signed by three-fifths of all the members of the Senate and upon receipt by the Speaker of the House of Representatives of written requests therefor signed by three-fifths of all the members of the House of Representatives.

Sec. 12. *Oath of members.* Each member of the General Assembly, before taking his seat, shall take an oath or affirmation that he will support the Constitution and laws of the United States and the Constitution of the State of North Carolina, and will faithfully discharge his duty as a member of the Senate or House of Representatives.

Sec. 13. *President of the Senate.* The Lieutenant Governor shall be President of the Senate and shall preside over the Senate, but shall have no vote unless the Senate is equally divided.

Sec. 14. *Other officers of the Senate.*

(1) *President Pro Tempore - succession to presidency.* The Senate shall elect from its membership a President Pro Tempore, who shall become President of the Senate upon the failure of the Lieutenant Governor-elect to qualify, or upon succession by the Lieutenant Governor to the office of Governor, or upon the death, resignation, or

removal from office of the President of the Senate, and who shall serve until the expiration of his term of office as Senator.

(2) *President Pro Tempore - temporary succession.* During the physical or mental incapacity of the President of the Senate to perform the duties of his office, or during the absence of the President of the Senate, the President Pro Tempore shall preside over the Senate.

(3) *Other officers.* The Senate shall elect its other officers.

Sec. 15. *Officers of the House of Representatives.* The House of Representatives shall elect its Speaker and other officers.

Sec. 16. *Compensation and allowances.* The members and officers of the General Assembly shall receive for their services the compensation and allowances prescribed by law. An increase in the compensation or allowances of members shall become effective at the beginning of the next regular session of the General Assembly following the session at which it was enacted.

Sec. 17. *Journals.* Each house shall keep a journal of its proceedings, which shall be printed and made public immediately after the adjournment of the General Assembly.

Sec. 18. *Protests.* Any member of either house may dissent from and protest against any act or resolve which he may think injurious to the public or to any individual, and have the reasons of his dissent entered on the journal.

Sec. 19. *Record votes.* Upon motion made in either house and seconded by one fifth of the members present, the yeas and nays upon any question shall be taken and entered upon the journal.

Sec. 20. *Powers of the General Assembly.* Each house shall be judge of the qualifications and elections of its own members, shall sit upon its own adjournment from day to day, and shall prepare bills to be enacted into laws. The two houses may jointly adjourn to any future day or other place. Either house may, of its own motion, adjourn for a period not in excess of three days.

Sec. 21. *Style of the acts.* The style of the acts shall be: "The General Assembly of North Carolina enacts:".

Sec. 22. *Action on bills.* All bills and resolutions of a legislative nature shall be read three times in each house before they become laws, and shall be signed by the presiding officers of both houses.

Sec. 23. *Revenue bills.* No laws shall be enacted to raise money on the credit of the State, or to pledge the faith of the State directly or indirectly for the payment of any debt, or to impose any tax upon the people of the State, or to allow the counties, cities, or towns to do so, unless the bill for the purpose shall have been read three several times in each house of the General Assembly and passed three several readings, which readings shall have been on three different days, and shall have been agreed to by each house respectively, and unless the yeas and nays on the second and third readings of the bill shall been entered on the journal.

Sec. 24. *Limitations on local, private, and special legislation.*

(1) *Prohibited subjects.* The General Assembly shall not enact any local, private, or special act or resolution:

(a) Relating to health, sanitation, and the abatement of nuisances;

(b) Changing the names of cities, towns, and townships;

(c) Authorizing the laying out, opening, altering, maintaining, or discontinuing of highways, streets, or alleys;

(d) Relating to ferries or bridges;

(e) Relating to non-navigable streams;

(f) Relating to cemeteries;

(g) Relating to the pay of jurors;

(h) Erecting new townships, or changing township lines, or establishing or changing the lines of school districts;

(i) Remitting fines, penalties, and forfeitures, or refunding moneys legally paid into the public treasury;

(j) Regulating labor, trade, mining, or manufacturing;

(k) Extending the time for the levy or collection of taxes or otherwise relieving any collector of taxes from the due performance of his official duties or his sureties from liability;

(l) Giving effect to informal wills and deeds;

(m) Granting a divorce or securing alimony in any individual case;

(n) Altering the name of any person, or legitimating any person not born in lawful wedlock, or restoring to the rights of citizenship any person convicted of a felony.

(2) *Repeals.* Nor shall the General Assembly enact any such local, private, or special act by partial repeal of a general law; but the General Assembly may at any time repeal local, private, or special laws enacted by it.

(3) *Prohibited acts void.* Any local, private, or special act or resolution enacted in violation of the provisions of this Section shall be void.

(4) *General laws.* The General Assembly may enact general laws regulating the matters set out in this Section.

ARTICLE III

EXECUTIVE

Section 1. *Executive power.* The executive power of the State shall be vested in the Governor.

Sec. 2. *Governor and Lieutenant Governor: election, term, and qualifications.*

(1) *Election and term.* The Governor and Lieutenant Governor shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Qualifications.* No person shall be eligible for election to the office of Governor or Lieutenant Governor unless, at the time of his election, he shall have attained the age of 30 years and shall have been a citizen of the United States for five years and a resident of this State for two years immediately preceding his election. No person elected to the Office of Governor or Lieutenant Governor shall be eligible for election to more than two consecutive terms of the same office.

Sec. 3. *Succession to office of Governor.*

(1) *Succession as Governor.* The Lieutenant Governor-elect shall become Governor upon the failure of the Governor-elect to qualify.

The Lieutenant Governor shall become Governor upon the death, resignation, or removal from office of the Governor. The further order of succession to the office of Governor shall be prescribed by law. A successor shall serve for the remainder of the term of the Governor whom he succeeds and until a new Governor is elected and qualified.

(2) *Succession as Acting Governor.* During the absence of the Governor from the State, or during the physical or mental incapacity of the Governor to perform the duties of his office, the Lieutenant Governor shall be Acting Governor. The further order of succession as Acting Governor shall be prescribed by law.

(3) *Physical incapacity.* The Governor may, by a written statement filed with the Attorney General, declare that he is physically incapable of performing the duties of his office, and may thereafter in the same manner declare that he is physically capable of performing the duties of his office.

(4) *Mental incapacity.* The mental incapacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of two-thirds of all the members of each house of the General Assembly. Thereafter, the mental capacity of the Governor to perform the duties of his office shall be determined only by joint resolution adopted by a vote of a majority of all the members of each house of the General Assembly. In all cases, the General Assembly shall give the Governor such notice as it may deem proper and shall allow him an opportunity to be heard before a joint session of the General Assembly before it takes final action. When the General Assembly is not in session, the Council of State, a majority of its members concurring, may convene it in extra session for the purpose of proceeding under this paragraph.

(5) *Impeachment.* Removal of the Governor from office for any other cause shall be by impeachment.

Sec. 4. *Oath of office for Governor.* The Governor, before entering upon the duties of his office, shall, before any Justice of the Supreme Court, take an oath or affirmation that he will support the Constitution and laws of the United States and of the State of North Carolina, and that he will faithfully perform the duties pertaining to the office of governor.

Sec. 5. *Duties of Governor.*

(1) *Residence.* The Governor shall reside at the seat of government of this State.

(2) *Information to General Assembly.* The Governor shall from time to time give the General Assembly information of the affairs of the State and recommend to their consideration such measures as he shall deem expedient.

(3) *Budget.* The Governor shall prepare and recommend to the General Assembly a comprehensive budget of the anticipated revenue and proposed expenditures of the State for the ensuing fiscal period. The budget as enacted by the General Assembly shall be administered by the Governor.

The total expenditures of the State for the fiscal period covered by the budget shall not exceed the total of receipts during that fiscal period and the surplus remaining in the State Treasury at the beginning of the period. To insure that the State does not incur a deficit for any fiscal period, the Governor shall continually survey the collection of the revenue and shall effect the necessary economies in State expenditures, after first making adequate provision for the prompt payment of the principal of and interest on bonds and notes of the State according to their terms, whenever he determines that receipts during the fiscal period, when added to any surplus remaining in the State Treasury at the beginning of the period, will not be sufficient to meet budgeted expenditures. This section shall not be construed to impair the power of the State to issue its bonds and notes within the limitations imposed in Article V of this Constitution, nor to impair the obligation of bonds and notes of the State now outstanding or issued hereafter.

(4) *Execution of laws.* The Governor shall take care that the laws be faithfully executed.

(5) *Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State except when they shall be called into the service of the United States.

(6) *Clemency.* The Governor may grant reprieves, commutations, and pardons, after conviction, for all offenses (except in cases of impeachment), upon such conditions as he may think proper, subject to regulations prescribed by law relative to the manner of applying for pardons. The terms reprieves, commutations, and pardons shall not include paroles.

(7) *Extra sessions.* The Governor may, on extraordinary occasions, by and with the advice of the Council of State, convene the General Assembly in extra session by his proclamation, stating therein the purpose or purposes for which they are thus convened.

(8) *Appointments.* The Governor shall nominate and by and with the advice and consent of a majority of the Senators appoint all officers whose appointments are not otherwise provided for.

(9) *Information.* The Governor may at any time require information in writing from the head of any administrative department or agency upon any subject relating to the duties of his office.

(10) *Administrative reorganization.* The General Assembly shall prescribe the functions, powers, and duties of the administrative departments and agencies of the State and may alter them from time to time, but the Governor may make such changes in the allocation of offices and agencies and in the allocation of those functions, powers, and duties as he considers necessary for efficient administration. If those changes affect existing law, they shall be set forth in executive orders, which shall be submitted to the General Assembly not later than the sixtieth calendar day of its session, and shall become effective and shall have the force of law upon adjournment sine die of the session, unless specifically disapproved by resolution of either house of the General Assembly or specifically modified by joint resolution of both houses of the General Assembly.

Sec. 6. *Duties of the Lieutenant Governor.* The Lieutenant Governor shall be President of the Senate, but shall have no vote unless the Senate is equally divided. He shall perform such additional duties as the General Assembly or the Governor may assign to him. He shall receive the compensation and allowances prescribed by law.

Sec. 7. *Other elective officers.*

(1) *Officers.* A Secretary of State, an Auditor, a Treasurer, a Superintendent of Public Instruction, an Attorney General, a Commissioner of Agriculture, a Commissioner of Labor, and a Commissioner of Insurance shall be elected by the qualified voters of the State in 1972 and every four years thereafter, at the same time and places as members of the General Assembly are elected. Their term of office shall be four years and shall commence on the first day of January next after their election and continue until their successors are elected and qualified.

(2) *Duties.* Their respective duties shall be prescribed by law.

(3) *Vacancies.* If the office of any of these officers is vacated by death, resignation, or otherwise, it shall be the duty of the Governor to appoint another to serve until his successor is elected and qualified. Every such vacancy shall be filled by election at the first election for members of the General Assembly that occurs more than 60 days after the vacancy has taken place, and the person chosen shall hold the office for the remainder of the unexpired term fixed in this Section. When a vacancy occurs in the office of any of the officers named in this Section and the term expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill the vacancy for the unexpired term of the office.

(4) *Interim officers.* Upon the occurrence of a vacancy in the office of any one of these officers for any of the causes stated in the preceding paragraph, the Governor may appoint an interim officer to perform the duties of that office until a person is appointed or elected pursuant to this Section to fill the vacancy and is qualified.

(5) *Acting officers.* During the physical or mental incapacity of any one of these officers to perform the duties of his office, as determined pursuant to this Section, the duties of his office shall be performed by an acting officer who shall be appointed by the Governor.

(6) *Determination of incapacity.* The General Assembly shall by law prescribe with respect to those officers, other than the Governor, whose offices are created by this Article, procedures for determining the physical or mental incapacity of any officer to perform the duties of his office, and for determining whether an officer who has been temporarily incapacitated has sufficiently recovered his physical or mental capacity to perform the duties of his office. Removal of those officers from office for any other cause shall be by impeachment.

(7) *Special Qualifications for Attorney General.* Only persons duly authorized to practice law in the courts of this State shall be eligible for appointment or election as Attorney General.

Sec. 8. *Council of State.* The Council of State shall consist of the officers whose offices are established by this Article.

Sec. 9. *Compensation and allowances.* The officers whose offices are established by this Article shall at stated periods receive the compensation and allowances prescribed by law, which shall not be diminished during the time for which they have been chosen.

Sec. 10. *Seal of State.* There shall be a seal of the State, which shall be kept by the Governor and used by him as occasion may require, and shall be called "The Great Seal of the State of North Carolina". All grants or commissions shall be issued in the name and by the authority of the State of North Carolina, sealed with "The Great Seal of the State of North Carolina", and signed by the Governor.

Sec. 11. *Administrative departments.* Not later than July 1, 1975, all administrative departments, agencies, and offices of the State and their respective functions, powers, and duties shall be allocated by law among and within not more than 25 principal administrative departments so as to group them as far as practicable according to major purposes. Regulatory, quasi-judicial, and temporary agencies may, but need not, be allocated within a principal department.

ARTICLE IV

JUDICIAL

Section 1. *Judicial power.* The judicial power of the State shall, except as provided in Section 3 of this Article, be vested in a Court for the Trial of Impeachments and in a General Court of Justice. The General Assembly shall have no power to deprive the judicial department of any power or jurisdiction that rightfully pertains to it as a coordinate department of the government, nor shall it establish or authorize any courts other than as permitted by this Article.

Sec. 2. *General Court of Justice.* The General Court of Justice shall constitute a unified judicial system for purposes of jurisdiction, operation, and administration, and shall consist of an Appellate Division, a Superior Court Division, and a District Court Division.

Sec. 3. *Judicial powers of administrative agencies.* The General Assembly may vest in administrative agencies established pursuant to law such judicial powers as may be reasonably necessary as an incident to the accomplishment of the purposes for which the agencies were created. Appeals from administrative agencies shall be to the General Court of Justice.

Sec. 4. *Court for the Trial of Impeachments.* The House of Representatives solely shall have the power of impeaching. The Court for the Trial of Impeachments shall be the Senate. When the Governor or Lieutenant Governor is impeached, the Chief Justice shall preside over the Court. A majority of members shall be necessary to a quorum, and no person shall be convicted without the concurrence

of two-thirds of the Senators present. Judgment upon conviction shall not extend beyond removal from and disqualification to hold office in this State, but the party shall be liable to indictment and punishment according to law.

Sec. 5. *Appellate division.* The Appellate Division of the General Court of Justice shall consist of the Supreme Court and the Court of Appeals.

Sec. 6. *Supreme Court.*

(1) *Membership.* The Supreme Court shall consist of a Chief Justice and six Associate Justices, but the General Assembly may increase the number of Associate Justices to not more than eight. In the event the Chief Justice is unable, on account of absence or temporary incapacity, to perform any of the duties placed upon him, the senior Associate Justice available may discharge these duties.

(2) *Sessions of the Supreme Court.* The sessions of the Supreme Court shall be held in the City of Raleigh unless otherwise provided by the General Assembly.

Sec. 7. *Court of Appeals.* The structure, organization, and composition of the Court of Appeals shall be determined by the General Assembly. The Court shall have not less than five members, and may be authorized to sit in divisions, or other than en banc. Sessions of the Court shall be held at such times and places as the General Assembly may prescribe.

Sec. 8. *Retirement of Justices and Judges.* The General Assembly shall provide by general law for the retirement of Justices and Judges of the General Court of Justice, and may provide for the temporary recall of any retired Justice or Judge to serve on the court or courts of the division from which he was retired. The General Assembly shall also prescribe maximum age limits for service as a Justice or Judge.

Sec. 9. *Superior Courts.*

(1) *Superior Court districts.* The General Assembly shall, from time to time, divide the State into a convenient number of Superior Court judicial districts and shall provide for the election of one or more Superior Court Judges for each district. Each regular Superior Court Judge shall reside in the district for which he is elected. The General Assembly may provide by general law for the selection or appointment of special or emergency Superior Court Judges not selected for a particular judicial district.

(2) *Open at all times; sessions for trial of cases.* The Superior Courts shall be open at all times for the transaction of all business except the trial of issues of fact requiring a jury. Regular trial sessions of the Superior Court shall be held at times fixed pursuant to a calendar of courts promulgated by the Supreme Court. At least two sessions for the trial of jury cases shall be held annually in each county.

(3) *Clerks.* A Clerk of the Superior Court for each county shall be elected for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. If the office of Clerk of the Superior Court becomes vacant otherwise than by the expiration of the term, or if the people fail to elect, the senior regular resident Judge of the Superior Court serving the county shall appoint to fill the vacancy until an election can be regularly held.

Sec. 10. *District Courts.* The General Assembly shall, from time to time, divide the State into a convenient number of local court districts and shall prescribe where the District Courts shall sit, but a District Court must sit in at least one place in each county. District Judges shall be elected for each district for a term of four years, in a manner prescribed by law. When more than one District Judge is authorized and elected for a district, the Chief Justice of the Supreme Court shall designate one of the judges as Chief District Judge. Every District Judge shall reside in the district for which he is elected. For each county, the senior regular resident Judge of the Superior Court serving the county shall appoint for a term of two years, from nominations submitted by the Clerk of the Superior Court of the county, one or more Magistrates who shall be officers of the District Court. The number of District Judges and Magistrates shall, from time to time, be determined by the General Assembly. Vacancies in the office of District Judge shall be filled for the unexpired term in a manner prescribed by law. Vacancies in the office of Magistrate shall be filled for the unexpired term in the manner provided for original appointment to the office.

Sec. 11. *Assignment of Judges.* The Chief Justice of the Supreme Court, acting in accordance with rules of the Supreme Court, shall make assignments of Judges of the Superior Court and may transfer District Judges from one district to another for temporary or specialized duty. The principle of rotating Superior Court Judges among the various districts of a division is a salutary one and shall be observed. For this purpose the General Assembly may divide the State into a number of judicial divisions. Subject to the general supervision of the Chief Justice of the Supreme Court, assignment of

District Judges within each local court district shall be made by the Chief District Judge.

Sec. 12. *Jurisdiction of the General Court of Justice.*

(1) *Supreme Court.* The Supreme Court shall have jurisdiction to review upon appeal any decision of the courts below, upon any matter of law or legal inference. The jurisdiction of the Supreme Court over "issues of fact" and "questions of fact" shall be the same exercised by it prior to the adoption of this Article, and the Court may issue any remedial writs necessary to give it general supervision and control over the proceedings of the other courts. The Supreme Court also has jurisdiction to review, when authorized by law, direct appeals from a final order or decision of the North Carolina Utilities Commission.

(2) *Court of Appeals.* The Court of Appeals shall have such appellate jurisdiction as the General Assembly may prescribe.

(3) *Superior Court.* Except as otherwise provided by the General Assembly, the Superior Court shall have original general jurisdiction throughout the State. The Clerks of the Superior Court shall have such jurisdiction and powers as the General Assembly shall prescribe by general law uniformly applicable in every county of the State.

(4) *District Courts; Magistrates.* The General Assembly shall, by general law uniformly applicable in every local court district of the State, prescribe the jurisdiction and powers of the District Courts and Magistrates.

(5) *Waiver.* The General Assembly may by general law provide that the jurisdictional limits may be waived in civil cases.

(6) *Appeals.* The General Assembly shall by general law provide a proper system of appeals. Appeals from Magistrates shall be heard de novo, with the right of trial by jury as defined in this Constitution and the laws of this State.

Sec. 13. *Forms of action; rules of procedure.*

(1) *Forms of action.* There shall be in this State but one form of action for the enforcement or protection of private rights or the redress of private wrongs, which shall be denominated a civil action, and in which there shall be a right to have issues of fact tried before a jury. Every action prosecuted by the people of the State as a party against a person charged with a public offense, for the punishment thereof, shall be termed a criminal action.

(2) *Rules of procedure.* The Supreme Court shall have exclusive authority to make rules of procedure and practice for the Appellate Division. The General Assembly may make rules of procedure and practice for the Superior Court and District Court Divisions, and the General Assembly may delegate this authority to the Supreme Court. No rule of procedure or practice shall abridge substantive rights or abrogate or limit the right of trial by jury. If the General Assembly should delegate to the Supreme Court the rule-making power, the General Assembly may, nevertheless, alter, amend, or repeal any rule of procedure or practice adopted by the Supreme Court for the Superior Court or District Court Divisions.

Sec. 14. *Waiver of jury trial.* In all issues of fact joined in any court, the parties in any civil case may waive the right to have the issues determined by a jury, in which case the finding of the judge upon the facts shall have the force and effect of a verdict by a jury.

Sec. 15. *Administration.* The General Assembly shall provide for an administrative office of the courts to carry out the provisions of this Article.

Sec. 16. *Terms of office and election of Justices of the Supreme Court, Judges of the Court of Appeals, and Judges of the Superior Court.* Justices of the Supreme Court, Judges of the Court of Appeals, and regular Judges of the Superior Court shall be elected by the qualified voters and shall hold office for terms of eight years and until their successors are elected and qualified. Justices of the Supreme Court and Judges of the Court of Appeals shall be elected by the qualified voters of the State. Regular Judges of the Superior Court may be elected by the qualified voters of the State or by the voters of their respective districts, as the General Assembly may prescribe.

Sec. 17. *Removal of Judges, Magistrates and Clerks.*

(1) *Removal of Judges by the General Assembly.* Any Justice or Judge of the General Court of Justice may be removed from office for mental or physical incapacity by joint resolution of two-thirds of all the members of each house of the General Assembly. Any Justice or Judge against whom the General Assembly may be about to proceed shall receive notice thereof, accompanied by a copy of the causes alleged for his removal, at least 20 days before the day on which either house of the General Assembly shall act thereon. Removal from office by the General Assembly for any other cause shall be by impeachment.

(2) *Additional method of removal of Judges.* The General Assembly shall prescribe a procedure, in addition to impeachment and address set forth in this Section, for the removal of a Justice or Judge of the General Court of Justice for mental or physical incapacity interfering with the performance of his duties which is, or is likely to become, permanent, and for the censure and removal of a Justice or Judge of the General Court of Justice for wilful misconduct in office, wilful and persistent failure to perform his duties, habitual intemperance, conviction of a crime involving moral turpitude, or conduct prejudicial to the administration of justice that brings the judicial office into disrepute.

(3) *Removal of Magistrates.* The General Assembly shall provide by general law for the removal of Magistrates for misconduct or mental or physical incapacity.

(4) *Removal of Clerks.* Any Clerk of the Superior Court may be removed from office for misconduct or mental or physical incapacity by the senior regular resident Superior Court Judge serving the county. Any Clerk against whom proceedings are instituted shall receive written notice of the charges against him at least 10 days before the hearing upon the charges. Any Clerk so removed from office shall be entitled to an appeal as provided by law.

Sec. 18. *District Attorney and Prosecutorial Districts.*

(1) *District Attorneys.* The General Assembly shall, from time to time, divide the State into a convenient number of prosecutorial districts, for each of which a District Attorney shall be chosen for a term of four years by the qualified voters thereof, at the same time and places as members of the General Assembly are elected. Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a District Attorney. The District Attorney shall advise the officers of justice in his district, be responsible for the prosecution on behalf of the State of all criminal actions in the Superior Courts of his district, perform such duties related to appeals therefrom as the Attorney General may require, and perform such other duties as the General Assembly may prescribe.

(2) *Prosecution in District Court Division.* Criminal actions in the District Court Division shall be prosecuted in such manner as the General Assembly may prescribe by general law uniformly applicable in every local court district of the State.

Sec. 19. *Vacancies.* Unless otherwise provided in this Article, all vacancies occurring in the offices provided for by this Article shall be

filled by appointment of the Governor, and the appointees shall hold their places until the next election for members of the General Assembly that is held more than 60 days after the vacancy occurs, when elections shall be held to fill the offices. When the unexpired term of any of the offices named in this Article of the Constitution in which a vacancy has occurred, and in which it is herein provided that the Governor shall fill the vacancy, expires on the first day of January succeeding the next election for members of the General Assembly, the Governor shall appoint to fill that vacancy for the unexpired term of the office. If any person elected or appointed to any of these offices shall fail to qualify, the office shall be appointed to, held and filled as provided in case of vacancies occurring therein. All incumbents of these offices shall hold until their successors are qualified.

Sec. 20. *Revenues and expenses of the judicial department.* The General Assembly shall provide for the establishment of a schedule of court fees and costs which shall be uniform throughout the State within each division of the General Court of Justice. The operating expenses of the judicial department, other than compensation to process servers and other locally paid non-judicial officers, shall be paid from State funds.

Sec. 21. *Fees, salaries and emoluments.* The General Assembly shall prescribe and regulate the fees, salaries, and emoluments of all officers provided for in this Article, but the salaries of Judges shall not be diminished during their continuance in office. In no case shall the compensation of any Judge or Magistrate be dependent upon his decision or upon the collection of costs.

Sec. 22. *Qualification of Justices and Judges.* Only persons duly authorized to practice law in the courts of this State shall be eligible for election or appointment as a Justice of the Supreme Court, Judge of the Court of Appeals, Judge of the Superior Court, or Judge of District Court. This section shall not apply to persons elected to or serving in such capacities on or before January 1, 1981.

ARTICLE V

FINANCE

Section 1. *No capitation tax to be levied.* No poll or capitation tax shall be levied by the General Assembly or by any county, city or town, or other taxing unit.

Sec. 2. *State and local taxation.*

(1) *Power of taxation.* The power of taxation shall be exercised in a just and equitable manner, for public purposes only, and shall never be surrendered, suspended, or contracted away.

(2) *Classification.* Only the General Assembly shall have the power to classify property for taxation, which power shall be exercised only on a State-wide basis and shall not be delegated. No class of property shall be taxed except by uniform rule, and every classification shall be made by general law uniformly applicable in every county, city and town, and other unit of local government.

(3) *Exemptions.* Property belonging to the State, counties, and municipal corporations shall be exempt from taxation. The General Assembly may exempt cemeteries and property held for educational, scientific, literary, cultural, charitable, or religious purposes, and, to a value not exceeding $300, any personal property. The General Assembly may exempt from taxation not exceeding $1,000 in value of property held and used as the place of residence of the owner. Every exemption shall be on a State-wide basis and shall be made by general law uniformly applicable in every county, city and town, and other unit of local government. No taxing authority other than the General Assembly may grant exemptions, and the General Assembly shall not delegate the powers accorded to it by this subsection.

(4) *Special tax areas.* Subject to the limitations imposed by Section 4, the General Assembly may enact general laws authorizing the governing body of any county, city, or town to define territorial areas and to levy taxes within those areas, in addition to those levied throughout the county, city, or town, in order to finance, provide, or maintain services, facilities, and functions in addition to or to a greater extent than those financed, provided, or maintained for the entire county, city, or town.

(5) *Purposes of property tax.* The General Assembly shall not authorize any county, city or town, special district, or other unit of local government to levy taxes on property, except for purposes authorized by general law uniformly applicable throughout the State, unless the tax is approved by a majority of the qualified voters of the unit who vote thereon.

(6) *Income tax.* The rate of tax on incomes shall not in any case exceed ten percent, and there shall be allowed personal exemptions and deductions so that only net incomes are taxed.

(7) *Contracts.* The General Assembly may enact laws whereby the State, any county, city or town, and any other public corporation may contract with and appropriate money to any person, association, or corporation for the accomplishment of public purposes only.

Sec. 3. *Limitations upon the increase of State debt.*

(1) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to contract debts secured by a pledge of the faith and credit of the State, unless approved by a majority of the qualified voters of the State who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;

(b) to supply an unforeseen deficiency in the revenue;

(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;

(d) to suppress riots or insurrections, or to repel invasions;

(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;

(f) for any other lawful purpose, to the extent of two-thirds of the amount by which the State's outstanding indebtedness shall have been reduced during the next preceding biennium.

(2) *Gift or loan of credit regulated.* The General Assembly shall have no power to give or lend the credit of the State in aid of any person, association, or corporation, except a corporation in which the State has a controlling interest, unless the subject is submitted to a direct vote of the people of the State, and is approved by a majority of the qualified voters who vote thereon.

(3) *Definitions.* A debt is incurred within the meaning of this Section when the State borrows money. A pledge of the faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when the State exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(4) *Certain debts barred.* The General Assembly shall never assume or pay any debt or obligation, express or implied, incurred in aid of insurrection or rebellion against the United States. Neither shall the General Assembly assume or pay any debt or bond incurred or issued by authority of the Convention of 1868, the special session of the General Assembly of 1868, or the General Assemblies of 1868-69 and 1869-70, unless the subject is submitted to the people of the State and is approved by a majority of all the qualified voters at a referendum held for that sole purpose.

(5) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 4. *Limitations upon the increase of local government debt.*

(1) Regulation of borrowing and debt. The General Assembly shall enact general laws relating to the borrowing of money secured by a pledge of the faith and credit and the contracting of other debts by counties, cities and towns, special districts, and other units, authorities, and agencies of local government.

(2) *Authorized purposes; two-thirds limitation.* The General Assembly shall have no power to authorize any county, city or town, special district, or other unit of local government to contract debts secured by a pledge of its faith and credit unless approved by a majority of the qualified voters of the unit who vote thereon, except for the following purposes:

(a) to fund or refund a valid existing debt;
(b) to supply an unforseen deficiency in the revenue;
(c) to borrow in anticipation of the collection of taxes due and payable within the current fiscal year to an amount not exceeding 50 per cent of such taxes;
(d) to suppress riots or insurrections;
(e) to meet emergencies immediately threatening the public health or safety, as conclusively determined in writing by the Governor;
(f) for purposes authorized by general laws uniformly applicable throughout the State, to the extent of two-thirds of the amount by which the unit's outstanding indebtedness shall have been reduced during the next preceding fiscal year.

(3) *Gift or loan of credit regulated.* No county, city or town, special district, or other unit of local government shall give or lend its

credit in aid of any person, association, or corporation, except for public purposes as authorized by general law, and unless approved by a majority of the qualified voters of the unit who vote thereon.

(4) *Certain debts barred.* No county, city or town, or other unit of local government shall assume or pay any debt or the interest thereon contracted directly or indirectly in aid or support of rebellion or insurrection against the United States.

(5) *Definitions.* A debt is incurred within the meaning of this Section when a county, city or town, special district, or other unit, authority, or agency of local government borrows money. A pledge of faith and credit within the meaning of this Section is a pledge of the taxing power. A loan of credit within the meaning of this Section occurs when a county, city or town, special district, or other unit, authority, or agency of local government exchanges its obligations with or in any way guarantees the debts of an individual, association, or private corporation.

(6) *Outstanding debt.* Except as provided in subsection (4), nothing in this Section shall be construed to invalidate or impair the obligation of any bond, note, or other evidence of indebtedness outstanding or authorized for issue as of July 1, 1973.

Sec. 5. *Acts levying taxes to state objects.* Every act of the General Assembly levying a tax shall state the special object to which it is to be applied, and it shall be applied to no other purpose.

Sec. 6. *Inviolability of sinking funds and retirement funds.*

(1) Sinking funds. The General Assembly shall not use or authorize to be used any part of the amount of any sinking fund for any purpose other than the retirement of the bonds for which the sinking fund has been created, except that these funds may be invested as authorized by law.

(2) *Retirement funds.* Neither the General Assembly nor any public officer, employee, or agency shall use or authorize to be used any part of the funds of the Teachers' and State Employees' Retirement System or the Local Governmental Employees' Retirement System for any purpose other than retirement system benefits and purposes, administrative expenses, and refunds; except that retirement system funds may be invested as authorized by law, subject to the investment limitation that the funds of the Teachers' and State Employees' Retirement System and the Local Governmental Employees' Retirement System shall not be applied, diverted, loaned to, or used

by the State, any State agency, State officer, public officer, or public employee.

Sec. 7. *Drawing public money.*

(1) *State treasury.* No money shall be drawn from the State treasury but in consequence of appropriations made by law, and an accurate account of the receipts and expenditures of State funds shall be published annually.

(2) *Local treasury.* No money shall be drawn from the treasury of any county, city or town, or other unit of local government except by authority of law.

Sec. 8. *Health care facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State, counties, cities or towns, and other State and local governmental entities to issue revenue bonds to finance or refinance for any such governmental entity or any nonprofit private corporation, regardless of any church or religious relationship, the cost of acquiring, constructing, and financing health care facility projects to be operated to serve and benefit the public; provided, no cost incurred earlier than two years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from the revenues, gross or net, of any such projects and any other health care facilities of any such governmental entity or nonprofit private corporation pledged therefor; shall not be secured by a pledge of the full faith and credit, or deemed to create an indebtedness requiring voter approval of any governmental entity; and may be secured by an agreement which may provide for the conveyance of title of, with or without consideration, any such project or facilities to the governmental entity or nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto for nonprofit private corporations.

Sec. 9. *Capital projects for industry.* Nothwithstanding any other provision of this Constitution, the General Assembly may enact general laws to authorize counties to create authorities to issue revenue bonds to finance, but not to refinance, the cost of capital projects consisting of industrial, manufacturing and pollution control facilities for industry and pollution control facilities for public utilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenues or property derived from

private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 10. *Joint ownership of generation and transmission facilities.* In addition to other powers conferred upon them by law, municipalities owning or operating facilities for the generation, transmission or distribution of electric power and energy and joint agencies formed by such municipalities for the purpose of owning or operating facilities for the generation and transmission of electric power and energy (each, respectively, "a unit of municipal government") may jointly or severally own, operate and maintain works, plants and facilities, within or without the State, for the generation and transmission of electric power and energy, or both, with any person, firm, association or corporation, public or private, engaged in the generation, transmission or distribution of electric power and energy for resale (each, respectively, "a co-owner") within this State or any state contiguous to this State, and may enter into and carry out agreements with respect to such jointly owned facilities. For the purpose of financing its share of the cost of any such jointly owned electric generation or transmission facilities, a unit of municipal government may issue its revenue bonds in the manner prescribed by the General Assembly, payable as to both principal and interest solely from and secured by a lien and charge on all or any part of the revenue derived, or to be derived, by such unit of municipal government from the ownership and operation of its electric facilities; provided, however, that no unit of municipal government shall be liable, either jointly or severally, for any acts, omissions or obligations of any co-owner, nor shall any money or property of any unit of municipal government be credited or otherwise applied to the account of any co-owner or be charged with any debt, lien or mortgage as a result of any debt or obligation of any co-owner.

Sec. 11. *Capital projects for agriculture.* Notwithstanding any other provision of the Constitution the General Assembly may enact general laws to authorize the creation of an agency to issue revenue bonds to finance the cost of capital projects consisting of agricultural facilities, and to refund such bonds.

In no event shall such revenue bonds be secured by or payable from any public moneys whatsoever, but such revenue bonds shall be secured by and payable only from revenue or property derived from private parties. All such capital projects and all transactions therefor shall be subject to taxation to the extent such projects and transactions would be subject to taxation if no public body were involved therewith; provided, however, that the General Assembly may provide that the interest on such revenue bonds shall be exempt from income taxes within the State.

The power of eminent domain shall not be exercised to provide any property for any such capital project.

Sec. 12. *Higher Education Facilities.* Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to authorize the State or any State entity to issue revenue bonds to finance and refinance the cost of acquiring, constructing, and financing higher education facilities to be operated to serve and benefit the public for any nonprofit private corporation, regardless of any church or religious relationship provided no cost incurred earlier than five years prior to the effective date of this section shall be refinanced. Such bonds shall be payable from any revenues or assets of any such nonprofit private corporation pledged therefor, shall not be secured by a pledge of the full faith and credit of the State or such State entity or deemed to create an indebtedness requiring voter approval of the State or such entity, and, where the title to such facilities is vested in the State or any State entity, may be secured by an agreement which may provide for the conveyance of title to, with or without consideration, such facilities to the nonprofit private corporation. The power of eminent domain shall not be used pursuant hereto.

Sec. 13. *Seaport and airport facilities.*(1) Notwithstanding any other provisions of this Constitution, the General Assembly may enact general laws to grant to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and airports, and to authorize such public bodies.

(a) To acquire, construct, own, own jointly with public and private parties, lease as lessee, mortgage, sell, lease as lessor, or otherwise dispose of lands and facilities and improvements, including undivided interest therein;

(b) To finance and refinance for public and private parties seaport and airport facilities and improvements which relate to, develop or further waterborne or airborne commerce and cargo and

passenger traffic, including commercial, industrial, manufacturing, processing, mining, transportation, distribution, storage, marine, aviation and environmental facilities and improvements; and

(c) To secure any such financing or refinancing by all or any portion of their revenues, income or assets or other available monies associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, and by foreclosable liens on all or any part of their properties associated with any of their seaport or airport facilities and with the facilities and improvements to be financed or refinanced, but in no event to create a debt secured by a pledge of the faith and credit of the State or any other public body in the State.

ARTICLE VI

SUFFRAGE AND ELIGIBILITY TO OFFICE

Section 1. *Who may vote.* Every person born in the United States and every person who has been naturalized, 18 years of age, and possessing the qualifications set out in this Article, shall be entitled to vote at any election by the people of the State, except as herein otherwise provided.

Sec. 2. *Qualifications of voter.*

(1) Residence period for State elections. Any person who has resided in the State of North Carolina for one year and in the precinct, ward, or other election district for 30 days next preceding an election, and possesses the other qualifications set out in this Article, shall be entitled to vote at any election held in this State. Removal from one precinct, ward, or other election district to another in this State shall not operate to deprive any person of the right to vote in the precinct, ward, or other election district from which that person has removed until 30 days after the removal.

(2) *Residence period for presidential elections.* The General Assembly may reduce the time of residence for persons voting in presidential elections. A person made eligible by reason of a reduction in time of residence shall possess the other qualifications set out in this Article, shall only be entitled to vote for President and Vice President of the United States or for electors for President and Vice President, and shall not thereby become eligible to hold office in this State.

(3) *Disqualification of felon.* No person adjudged guilty of a felony against this State or the United States, or adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, shall be permitted to vote unless that person shall be first restored to the rights of citizenship in the manner prescribed by law.

Sec. 3. *Registration.* Every person offering to vote shall be at the time legally registered as a voter as herein prescribed and in the manner provided by law. The General Assembly shall enact general laws governing the registration of voters.

Sec. 4. *Qualification for registration.* Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language.

Sec. 5. *Elections by people and General Assembly.* All elections by the people shall be by ballot, and all elections by the General Assembly shall be viva voce. A contested election for any office established by Article III of this Constitution shall be determined by joint ballot of both houses of the General Assembly in the manner prescribed by law.

Sec. 6. *Eligibility to elective office.* Every qualified voter in North Carolina who is 21 years of age, except as in this Constitution disqualified, shall be eligible for election by the people to office.

Sec. 7. *Oath.* Before entering upon the duties of an office, a person elected or appointed to the office shall take and subscribe the following oath:

"I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as ....., so help me God."

Sec. 8. *Disqualifications for office.* The following persons shall be disqualified for office:

First, any person who shall deny the being of Almighty God.

Second, with respect to any office that is filled by election by the people, any person who is not qualified to vote in an election for that office.

Third, any person who has been adjudged guilty of treason or any other felony against this State or the United States, or any person who has been adjudged guilty of a felony in another state that also would be a felony if it had been committed in this State, or any person who has been adjudged guilty of corruption or malpractice in any office, or any person who has been removed by impeachment from any office, and who has not been restored to the rights of citizenship in the manner prescribed by law.

Sec. 9. *Dual office holding.*

(1) *Prohibitions.* It is salutary that the responsibilities of self-government be widely shared among the citizens of the State and that the potential abuse of authority inherent in the holding of multiple offices by an individual be avoided. Therefore, no person who holds any office or place of trust or profit under the United States or any department thereof, or under any other state or government, shall be eligible to hold any office in this State that is filled by election by the people. No person shall hold concurrently any two offices in this State that are filled by election of the people. No person shall hold concurrently any two or more appointive offices or places of trust or profit, or any combination of elective and appointive offices or places of trust or profit, except as the General Assembly shall provide by general law.

(2) *Exceptions.* The provisions of this Section shall not prohibit any officer of the military forces of the State or of the United States not on active duty for an extensive period of time, any notary public, or any delegate to a Convention of the People from holding concurrently another office or place of trust or profit under this State or the United States or any department thereof.

Sec. 10. *Continuation in office.* In the absence of any contrary provision, all officers in this State, whether appointed or elected, shall hold their positions until other appointments are made or, if the offices are elective, until their successors are chosen and qualified.

ARTICLE VII

LOCAL GOVERNMENT

Section 1. *General Assembly to provide for local government.* The General Assembly shall provide for the organization and government and the fixing of boundaries of counties, cities and towns, and other governmental subdivisions, and, except as otherwise prohibited by this

Constitution, may give such powers and duties to counties, cities and towns, and other governmental subdivisions as it may deem advisable.

The General Assembly shall not incorporate as a city or town, nor shall it authorize to be incorporated as a city or town, any territory lying within one mile of the corporate limits of any other city or town having a population of 5,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within three miles of the corporate limits of any other city or town having a population of 10,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within four miles of the corporate limits of any other city or town having a population of 25,000 or more according to the most recent decennial census of population taken by order of Congress, or lying within five miles of the corporate limits of any other city or town having a population of 50,000 or more according to the most recent decennial census of population taken by order of Congress. Notwithstanding the foregoing limitations, the General Assembly may incorporate a city or town by an act adopted by vote of three-fifths of all the members of each house.

Sec. 2. *Sheriffs.* In each county a Sheriff shall be elected by the qualified voters thereof at the same time and places as members of the General Assembly are elected and shall hold his office for a period of four years, subject to removal for cause as provided by law.

Sec. 3. *Merged or consolidated counties.* Any unit of local government formed by the merger or consolidation of a county or counties and the cities and towns therein shall be deemed both a county and a city for the purposes of this Constitution, and may exercise any authority conferred by law on counties, or on cities and towns, or both, as the General Assembly may provide.

ARTICLE VIII

CORPORATIONS

Section 1. *Corporate charters.* No corporation shall be created, nor shall its charter be extended, altered, or amended by special act, except corporations for charitable, educational, penal, or reformatory purposes that are to be and remain under the patronage and control of the State; but the General Assembly shall provide by general laws for the chartering, organization, and powers of all corporations, and for the amending, extending, and forefeiture of all charters, except those above permitted by special act. All such general acts may be altered

from time to time or repealed. The General Assembly may at any time by special act repeal the charter of any corporation.

Sec. 2. *Corporations defined.* The term "corporation" as used in this Section shall be construed to include all associations and joint-stock companies having any of the powers and privileges of corporations not possessed by individuals or partnerships. All corporations shall have the right to sue and shall be subject to be sued in all courts, in like cases as natural persons.

ARTICLE IX

EDUCATION

Section 1. *Education encouraged.* Religion, morality, and knowledge being necessary to good government and the happiness of mankind, schools, libraries, and the means of education shall forever be encouraged.

Sec. 2. *Uniform system of schools.*

(1) General and uniform system; term. The General Assembly shall provide by taxation and otherwise for a general and uniform system of free public schools, which shall be maintained at least nine months in every year, and wherein equal opportunities shall be provided for all students.

(2) *Local responsibility.* The General Assembly may assign to units of local government such responsibility for the financial support of the free public schools as it may deem appropriate. The governing boards of units of local government with financial responsibility for public education may use local revenues to add to or supplement any public school or post-secondary school program.

Sec. 3. *School attendance.* The General Assembly shall provide that every child of appropriate age and of sufficient mental and physical ability shall attend the public schools, unless educated by other means.

Sec. 4. *State Board of Education.*

(1) *Board.* The State Board of Education shall consist of the Lieutenant Governor, the Treasurer, and eleven members appointed by the Governor, subject to confirmation by the General Assembly in joint session. The General Assembly shall divide the State into eight educational districts. Of the appointive members of the Board, one

shall be appointed from each of the eight educational districts and three shall be appointed from the State at large. Appointments shall be for overlapping terms of eight years. Appointments to fill vacancies shall be made by the Governor for the unexpired terms and shall not be subject to confirmation.

(2) *Superintendent of Public Instruction.* The Superintendent of Public Instruction shall be the secretary and chief administrative officer of the State Board of Education.

Sec. 5. *Powers and duties of Board.* The State Board of Education shall supervise and administer the free public school system and the educational funds provided for its support, except the funds mentioned in Section 7 of this Article, and shall make all needed rules and regulations in relation thereto, subject to laws enacted by the General Assembly.

Sec. 6. *State school fund.* The proceeds of all lands that have been or hereafter may be granted by the United States to this State, and not otherwise appropriated by this State or the United States; all moneys, stocks, bonds, and other property belonging to the State for purposes of public education; the net proceeds of all sales of the swamp lands belonging to the State; and all other grants, gifts, and devises that have been or hereafter may be made to the State, and not otherwise appropriated by the State or by the terms of the grant, gift, or devise, shall be paid into the State Treasury and, together with so much of the revenue of the State as may be set apart for that purpose, shall be faithfully appropriated and used exclusively for establishing and maintaining a uniform system of free public schools.

Sec. 7. *County school fund.* All moneys, stocks, bonds, and other property belonging to a county school fund, and the clear proceeds of all penalties and forfeitures and of all fines collected in the several counties for any breach of the penal laws of the State, shall belong to and remain in the several counties, and shall be faithfully appropriated and used exclusively for maintaining free public schools.

Sec. 8. *Higher education.* The General Assembly shall maintain a public system of higher education, comprising The University of North Carolina and such other institutions of higher education as the General Assembly may deem wise. The General Assembly shall provide for the selection of trustees of The University of North Carolina and of the other institutions of higher education, in whom shall be vested all the privileges, rights, franchises, and endowments heretofore granted to or conferred upon the trustees of these institutions. The General Assembly may enact laws necessary and

expedient for the maintenance and management of The University of North Carolina and the other public institutions of higher education.

Sec. 9. *Benefits of public institutions of higher education.* The General Assembly shall provide that the benefits of The University of North Carolina and other public institutions of higher education, as far as practicable, be extended to the people of the State free of expense.

Sec. 10. *Escheats.*

(1) *Escheats prior to July 1, 1971.* All property that prior to July 1, 1971, accrued to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be appropriated to the use of The University of North Carolina.

(2) *Escheats after June 30, 1971.* All property that, after June 30, 1971, shall accrue to the State from escheats, unclaimed dividends, or distributive shares of the estates of deceased persons shall be used to aid worthy and needy students who are residents of this State and are enrolled in public institutions of higher education in this State. The method, amount, and type of distribution shall be prescribed by law.

ARTICLE X

HOMESTEADS AND EXEMPTIONS

Section 1. *Personal property exemptions.* The personal property of any resident of this State, to a value fixed by the General Assembly but not less than $500, to be selected by the resident, is exempted from sale under execution or other final process of any court, issued for the collection of any debt.

Sec. 2. *Homestead exemptions.*

(1) *Exemption from sale; exceptions.* Every homestead and the dwellings and buildings used therewith, to a value fixed by the General Assembly but not less than $1,000, to be selected by the owner thereof, or in lieu thereof, at the option of the owner, any lot in a city or town with the dwellings and buildings used thereon, and to the same value, owned and occupied by a resident of the State, shall be exempt from sale under execution or other final process obtained on any debt. But no property shall be exempt from sale for taxes, or for payment of obligations contracted for its purchase.

(2) *Exemption for benefit of children.* The homestead, after the death of the owner thereof, shall be exempt from the payment of any debt during the minority of the owner's children, or any of them.

(3) *Exemption for benefit of surviving spouse.* If the owner of a homestead dies, leaving a surviving spouse but no minor children, the homestead shall be exempt from the debts of the owner, and the rents and profits thereof shall inure to the benefit of the surviving spouse until he or she remarries, unless the surviving spouse is the owner of a separate homestead.

(4) *Conveyance of homestead.* Nothing contained in this Article shall operate to prevent the owner of a homestead from disposing of it by deed, but no deed made by a married owner of a homestead shall be valid without the signature and acknowledgement of his or her spouse.

Sec. 3. *Mechanics' and laborers' liens.* The General Assembly shall provide by proper legislation for giving to mechanics and laborers an adequate lien on the subject-matter of their labor. The provisions of Sections 1 and 2 of this Article shall not be so construed as to prevent a laborer's lien for work done and performed for the person claiming the exemption or a mechanics's lien for work done on the premises.

Sec. 4. *Property of married women secured to them.* The real and personal property of any female in this State acquired before marriage, and all property, real and personal, to which she may, after marriage, become in any manner entitled, shall be and remain the sole and separate estate and property of such female, and shall not be liable for any debts, obligations, or engagements of her husband, and may be devised and bequeathed and conveyed by her, subject to such regulations and limitations as the General Assembly may prescribe. Every married woman may exercise powers of attorney conferred upon her by her husband, including the power to execute and acknowledge deeds to property owned by herself and her husband or by her husband.

Sec. 5. *Insurance.* A person may insure his or her own life for the sole use and benefit of his or her spouse or children or both, and upon his or her death the proceeds from the insurance shall be paid to or for the benefit of the spouse or children or both, or to a guardian, free from all claims of the representatives or creditors of the insured or his or her estate. Any insurance policy which insures the life of a person for the sole use and benefit of that person's spouse or children or both shall not be subject to the claims of creditors of the insured

during his or her lifetime, whether or not the policy reserves to the insured during his or her lifetime any or all rights provided for by the policy and whether or not the policy proceeds are payable to the estate of the insured in the event the beneficiary or beneficiaries predecease the insured.

ARTICLE XI

PUNISHMENTS, CORRECTIONS, AND CHARITIES

Section 1. *Punishments.* The following punishments only shall be known to the laws of this State: death, imprisonment, fines, removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under this State.

Sec. 2. *Death punishment.* The object of punishments being not only to satisfy justice, but also to reform the offender and thus prevent crime, murder, arson, burglary, and rape, and these only, may be punishable with death, if the General Assembly shall so enact.

Sec. 3. *Charitable and correctional institutions and agencies.* Such charitable, benevolent, penal, and correctional institutions and agencies as the needs of humanity and the public good may require shall be established and operated by the State under such organization and in such manner as the General Assembly may prescribe.

Sec. 4. *Welfare policy; board of public welfare.* Beneficent provision for the poor, the unfortunate, and the orphan is one of the first duties of a civilized and a Christian state. Therefore the General Assembly shall provide for and define the duties of a board of public welfare.

ARTICLE XII

MILITARY FORCES

Section 1. *Governor is Commander in Chief.* The Governor shall be Commander in Chief of the military forces of the State and may call out those forces to execute the law, suppress riots and insurrections, and repel invasion.

ARTICLE XIII

CONVENTIONS; CONSTITUTIONAL AMENDMENT AND REVISION

Section 1. *Convention of the People.* No Convention of the People of this State shall ever be called unless by the concurrence of two-thirds of all the members of each house of the General Assembly, and unless the proposition "Convention or No Convention" is first submitted to the qualified voters of the State at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast upon the proposition are in favor of a Convention, it shall assemble on the day prescribed by the General Assembly. The General Assembly shall, in the act of submitting the convention proposition, propose limitations upon the authority of the Convention; and if a majority of the votes cast upon the proposition are in favor of a Convention, those limitations shall become binding upon the Convention. Delegates to the Convention shall be elected by the qualified voters at the time and in the manner prescribed in the act of submission. The Convention shall consist of a number of delegates equal to the membership of the House of Representatives of the General Assembly that submits the convention proposition and the delegates shall be apportioned as is the House of Representatives. A Convention shall adopt no ordinance not necessary to the purpose for which the Convention has been called.

Sec. 2. *Power to revise or amend Constitution reserved to people.* The people of this State reserve the power to amend this Constitution and to adopt a new or revised Constitution. This power may be exercised by either of the methods set out hereinafter in this Article, but in no other way.

Sec. 3. *Revision or amendment by Convention of the People.* A Convention of the People of this State may be called pursuant to Section 1 of this Article to propose a new or revised Constitution or to propose amendments to this Constitution. Every new or revised Constitution and every constitutional amendment adopted by a Convention shall be submitted to the qualified voters of the State at the time and in the manner prescribed by the Convention. If a majority of the votes cast thereon are in favor of ratification of the new or revised Constitution or the constitutional amendment or amendments, it or they shall become effective January first next after ratification by the qualified voters unless a different effective date is prescribed by the Convention.

Sec. 4. *Revision or amendment by legislative initiation.* A proposal of a new or revised Constitution or an amendment or amendments to

this Constitution may be initiated by the General Assembly, but only if three-fifths of all the members of each house shall adopt an act submitting the proposal to the qualified voters of the State for their ratification or rejection. The proposal shall be submitted at the time and in the manner prescribed by the General Assembly. If a majority of the votes cast thereon are in favor of the proposed new or revised Constitution or constitutional amendment or amendments, it or they shall become effective January first next after ratification by the voters unless a different effective date is prescribed in the act submitting the proposal or proposals to the qualified voters.

ARTICLE XIV

MISCELLANEOUS

Section 1. *Seat of government.* The permanent seat of government of this State shall be at the City of Raleigh.

Sec. 2. *State boundaries.* The limits and boundaries of the State shall be and remain as they now are.

Sec. 3. *General laws defined.* Whenever the General Assembly is directed or authorized by this Constitution to enact general laws, or general laws uniformly applicable throughout the State, or general laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, no special or local act shall be enacted concerning the subject matter directed or authorized to be accomplished by general or uniformly applicable laws, and every amendment or repeal of any law relating to such subject matter shall also be general and uniform in its effect throughout the State. General laws may be enacted for classes defined by population or other criteria. General laws uniformly applicable throughout the State shall be made applicable without classification or exception in every unit of local government of like kind, such as every county, or every city and town, but need not be made applicable in every unit of local government in the State. General laws uniformly applicable in every county, city and town, and other unit of local government, or in every local court district, shall be made applicable without classification or exception in every unit of local government, or in every local court district, as the case may be. The General Assembly may at any time repeal any special, local, or private act.

Sec. 4. *Continuity of laws; protection of office holders.* The laws of North Carolina not in conflict with this Constitution shall continue in force until lawfully altered. Except as otherwise specifically provided, the adoption of this Constitution shall not have the effect of vacating

any office or term of office now filled or held by virtue of any election or appointment made under the prior Constitution of North Carolina and the laws of the State enacted pursuant thereto.

Sec. 5. *Conservation of natural resources.* It shall be the policy of this State to conserve and protect its land and waters for the benefit of all its citizenry, and to this end it shall be a proper function of the State of North Carolina and its political subdivisions to acquire and preserve park, recreational, and scenic areas, to control and limit the pollution of our air and water, to control excessive noise, and in every other appropriate way to preserve as a part of the common heritage of this State its forests, wetlands, estuaries, beaches, historical sites, openlands, and places of beauty.

To accomplish the aforementioned public purposes, the State and its counties, cities and towns, and other units of local government may acquire by purchase or gift properties or interests in properties which shall, upon their special dedication to and acceptance by resolution adopted by a vote of three-fifths of the members of each house of the General Assembly for those public purposes, constitute part of the "State Nature and Historic Preserve," and which shall not be used for other purposes except as authorized by law enacted by a vote of three-fifths of the members of each house of the General Assembly. The General Assembly shall prescribe by general law the conditions and procedures under which such properties or interests therein shall be dedicated for the aforementioned public purposes.

REGULAR SESSION 1991

H.B. 16 **CHAPTER 1**

AN ACT TO APPOINT MEMBERS OF THE WHITEVILLE CITY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Pursuant to Chapter 172, Session Laws of 1977, the following persons are appointed to the Board of Education for the Whiteville City School Administrative Unit, and they shall serve for a term of two years beginning on the second Tuesday in February of 1991: David Flowers, L. Calvin Duncan, LaDeen Powell, and Lana S. White.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of February, 1991.

S.B. 44 **CHAPTER 2**

AN ACT TO EXEMPT ROBESON COUNTY FROM CERTAIN STATUTORY REQUIREMENTS IN THE CONSTRUCTION OF A COUNTY DETENTION FACILITY.

Whereas, Robeson County has submitted plans for a 240-bed, direct-supervision detention facility for review by the State of North Carolina; and

Whereas, an estimate indicates that the completion of this facility will take at least 20 months; and

Whereas, the chairman of the Robeson County Board of Commissioners has received a notice of violation of State standards for

local confinement facilities that concerns allegations of overcrowded conditions at the Robeson County jail; and

Whereas, Robeson County is presently named as a defendant in a class action entitled Oxendine v. Robeson County, which also involves allegations of overcrowded conditions at the Robeson County jail; and

Whereas, members of the Robeson County Board of Commissioners have recently toured an indirect-supervision detention facility located in another state that was designed and constructed in less than one year using a concept known as "design and build;" and

Whereas, the members of the Robeson County Board of Commissioners believe that the immediate construction of an indirect-supervision detention facility would best serve the needs of the citizens of Robeson County; and

Whereas, the Robeson County Board of Commissioners has been informed that the concept of "design and build" may conflict with some provisions of Article 8 of Chapter 143 of the General Statutes concerning the letting of public contracts; and

Whereas, Chapter 8 of the the 1989 Session Laws exempted the State of North Carolina from certain provisions of Article 8 of Chapter 143 of the General Statutes in order to expedite construction in response to a similar overcrowding emergency; and

Whereas, the Robeson County Board of Commissioners has requested the passage of an act exempting the county from meeting certain requirements of Article 8 of Chapter 143 of the General Statutes; and

Whereas, the Robeson County Board of Commissioners has stated that it will endeavor to comply with the spirit of Article 8 by providing local contractors and minority contractors with an opportunity to bid on portions of the construction project; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The County of Robeson may contract for the design and construction of a county detention facility to relieve overcrowding at its current facility without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Sec. 2. This act is effective upon ratification, and expires July 1, 1992.

In the General Assembly read three times and ratified this the 25th day of February, 1991.

S.B. 50 **CHAPTER 3**

AN ACT TO APPOINT A PERSON TO FILL A VACANCY ON THE STATE BOARD OF TRANSPORTATION UPON THE RECOMMENDATION OF THE PRESIDENT OF THE SENATE.

Whereas, G.S. 120-121 authorizes the General Assembly to make certain appointments upon the recommendation of the President of the Senate; and

Whereas, the President of the Senate has made his recommendation; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Sanford Walter Bailey of Wake County is appointed to the State Board of Transportation for a term expiring June 30, 1991.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1991.

H.B. 76 **CHAPTER 4**

AN ACT TO AMEND THE CITY OF GREENSBORO CHARTER REGARDING INITIATIVE ELECTIONS, REWARDS, AND SETTLEMENT OF CLAIMS.

The General Assembly of North Carolina enacts:

Section 1. Section 2.71 of the City of Greensboro Charter, as set forth in Section 1 of Chapter 1137 of the 1959 Session Laws, as amended by Section 1 of Chapter 896 of the 1989 Session Laws, is amended by adding a new subsection to read:

"(d) No initiative petition proposing an ordinance that addresses essentially the same issue as, or requiring an amendment to, an ordinance that was the subject of a referendum election may be filed within one year after the referendum election."

Sec. 2. Section 2.76(d) of the City of Greensboro Charter, as set forth in Section 1 of Chapter 1137 of the 1959 Session Laws reads as rewritten:

"(d) An initiative election shall be held at the next regularly scheduled primary or general election in Guilford County for state, county or municipal officials following 90 days after the petition has been finally determined to be sufficient. A referendum or recall election shall be held no sooner than 90 days and no later than 120 days after the petition has been finally determined to be sufficient."

Sec. 3. Section 5.01 of the City of Greensboro Charter, as set forth in Section 1 of Chapter 1137 of the 1959 Session Laws reads as rewritten:

"Sec. 5.01. Rewards for Conviction of Certain Offenses.

The city council may offer and pay rewards for the conviction of any person or persons alleged to have committed criminal offenses which, in the judgment of the council, involved serious danger to the public peace or public safety, or involved malicious destruction of public property. The council shall fix the terms, conditions and amounts of such rewards. Rewards shall be paid only by order of the council from nontax revenues in the general fund of the city. The council shall, in its discretion, determine who shall be entitled to the collection of any reward."

Sec. 4. Section 7.03 of the City of Greensboro Charter, as set forth in Section 1 of Chapter 1137 of the 1959 Session Laws, and as amended in Chapter 686 of the 1961 Session Laws, Chapter 55 of the 1963 Session Laws, Chapter 213 of the 1973 Session Laws, and in Chapter 159 of the 1981 Session Laws, is amended by changing the dollar amount from ten thousand dollars ($10,000) to twenty-five thousand dollars ($25,000) in subdivisions (1) and (2).

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1991.

H.B. 85 **CHAPTER 5**

AN ACT TO AUTHORIZE CURRITUCK COUNTY TO ESTABLISH NOISE DISTRICTS AND TO REGULATE NOISE WITHIN THOSE DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-133 reads as rewritten:

"§ *153A-133. Noise regulation.*

(a) A county may by ordinance regulate, restrict, or prohibit the production or emission of noises or amplified speech, music, or other sounds that tend to annoy, disturb, or frighten its citizens.

(b) A county may establish districts within that county and may regulate unreasonably loud noise within those districts."

Sec. 2. This act applies only to Currituck County.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1991.

H.B. 88 **CHAPTER 6**

AN ACT TO EXEMPT THE CITY OF LAURINBURG FROM CERTAIN ZONING NOTICE REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 237 of the 1989 Session Laws is rewritten to read:

"Sec. 2. This act applies only to the Town of ~~Fairmont.~~ Fairmont and the City of Laurinburg."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of March, 1991.

S.B. 46 **CHAPTER 7**

AN ACT CONCERNING DISPOSITION OF PROPERTY FOR LOCAL DEVELOPMENT IN CATAWBA COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 266 of the 1989 Session Laws, as amended by Chapter 913 of the 1989 Session Laws, reads as rewritten:

"Sec. 2. This act applies to the Cities of Claremont, Hickory, Kinston, Lumberton, and Wilson, and the Counties of Catawba, Duplin, Lenoir, Macon, and Wilson only."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of March, 1991.

S.B. 178 **CHAPTER 8**

AN ACT TO EXEMPT THE TOWN OF MADISON FROM ARTICLE 8 OF CHAPTER 143 OF THE NORTH CAROLINA GENERAL STATUTES FOR THE PURPOSE OF EXTENDING WATER AND SEWER LINES.

The General Assembly of North Carolina enacts:

Section 1. The Town of Madison is exempt from Article 8 of Chapter 143 of the North Carolina General Statutes for the purpose of extending water and sewer lines.

Sec. 2. This act is effective upon ratification and expires December 31, 1991.

In the General Assembly read three times and ratified this the 18th day of March, 1991.

H.B. 63 **CHAPTER 9**

AN ACT TO ALLOW BURKE, RANDOLPH AND SAMPSON COUNTIES TO NAME PRIVATE ROADS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-238(b) reads as rewritten:

"(b) This section applies to Alamance, Avery, Brunswick, Burke, Cabarrus, Cleveland, Henderson, McDowell, New Hanover, Pender, Randolph, Sampson, Stokes and Surry Counties only."

Sec. 2. G.S. 153A-239.1(b) reads as rewritten:

"(b) This section applies to Alamance, Avery, Brunswick, Burke, Cabarrus, Cleveland, Henderson, McDowell, New Hanover, Pender, Randolph, Sampson, Stokes and Surry Counties only."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of March, 1991.

H.B. 24 **CHAPTER 10**

AN ACT TO CONSOLIDATE THE LAWS CONCERNING REPORTS BY THE DEPARTMENT OF REVENUE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-256 reads as rewritten:

"§ *105-256.* ~~*Preparation and publication of statistics.*~~ *Reports prepared by Secretary of Revenue.*

(a) Reports. -- The Secretary of Revenue shall ~~biennially, or more frequently if he so desires,~~ prepare and publish ~~reasonably available statistics dealing with the operation of this Subchapter and Subchapter V,~~ the following:

(1) At least every two years, statistics concerning taxes imposed by this Chapter, including amounts collected, classifications of taxpayers, ~~income and exemptions,~~ geographic distribution of taxes, and ~~such~~ other facts ~~as are deemed~~ considered pertinent and valuable.

(2) At least every two years, a tax expenditure report that lists the tax expenditures made by a provision in this Chapter other than a provision in Subchapter II and, when possible to do without impairing other duties of the Secretary or the Department of Revenue, the amount by which revenue is

reduced by each expenditure. A 'tax expenditure' is an exemption, an exclusion, a deduction, an allowance, a credit, a refund, a preferential tax rate, or another device that reduces the amount of tax revenue that would otherwise be available to the State.

(3) As often as required, a report that is not listed in this subsection but is required by another law.

(4) As often as the Secretary determines is needed, other reports concerning taxes imposed by this Chapter.

(b) Information. -- The Secretary of Revenue may require a unit of State or local government to furnish the Secretary statistical information the Secretary needs to prepare a report under this section. Upon request of the Secretary, a unit of government shall submit statistical information on one or more forms provided by the Secretary.

(c) Distribution. -- The Secretary of Revenue shall distribute reports prepared by the Secretary as follows without charge:

(1) Five copies to the Division of State Library of the Department of Cultural Resources, as required by G.S. 125-11.7.

(2) Five copies to the Legislative Services Commission for the use of the General Assembly.

(3) Upon request, one copy to each entity and official to which a copy of the reports of the Appellate Division of the General Court of Justice are furnished under G.S. 7A-343.1.

(4) Upon request, one copy to each member of the General Assembly.

The Secretary of Revenue may charge a person not listed in this subsection a fee for a report prepared by the Secretary in an amount that covers publication or copying costs and mailing costs."

Sec. 2. G.S. 105-257 reads as rewritten:

"§ *105-257.* ~~*Report to General Assembly on tax system.*~~ *Department may charge fee for report or other document.*

The Secretary of Revenue ~~shall biennially make report to the General Assembly, making such recommendations as he may consider useful in improving the tax laws and systems of this State.~~ may charge a fee for a report or another document in an amount that covers copying or publication costs and mailing costs."

Sec. 3. Article 37 of Subchapter VI of Chapter 105 of the General Statutes, G.S. 119-24, and G.S. 147-88 are repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1991.

H.B. 50 **CHAPTER 11**

AN ACT TO MAKE TECHNICAL CHANGES TO THE PROPERTY TAX STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-272 reads as rewritten:

"§ *105-272. Purpose of Subchapter.* The purpose of this Subchapter ~~(being G.S. 105-271 through 105-395, inclusive)~~ is to provide the machinery for the listing, appraisal, and assessment of property and the levy and collection of taxes on property by counties and municipalities. It is the intent of the General Assembly to make the provisions of this Subchapter uniformly applicable throughout the State, and to assure this objective no local act to become effective on or after July 1, 1971, shall be construed to repeal or amend any section of this Subchapter in whole or in part unless it shall expressly so provide by specific reference to the section to be repealed or amended. As used in this section, the term 'local act' means any act of the General Assembly that applies to one or more counties by name, to one or more municipalities by name, or to all municipalities within one or more named counties."

Sec. 2. G.S. 159-55(a)(4) reads as rewritten:

"(4) The ~~appraised~~ assessed value of property subject to taxation by the issuing ~~unit before the application of any assessment ratio. The appraised value of property subject to taxation by the issuing unit is the value from which the assessed value last fixed for taxation by the issuing unit was computed,~~ unit, as revealed by the ~~county~~ tax records and certified to the issuing unit by the ~~county tax supervisor,~~ assessor."

Sec. 3. G.S. 159-55(c) reads as rewritten:

"(c) No bond order shall be adopted unless it appears from the sworn statement of debt filed in connection therewith that the net debt of the unit does not exceed eight percent (8%) of the ~~appraised~~ assessed value of property subject to taxation by the issuing ~~unit before the application of any assessment ratio as determined under subsection (a)(4) of this section,~~ unit. This limitation shall not apply to:

(1) Funding and refunding bonds.

(2) Bonds issued for water, gas, or electric power purposes, or two or more of these purposes.

(3) Bonds issued for sanitary sewer system purposes when the bonds are deductible pursuant to subsection (b) of this section.

(4) Bonds issued for sanitary sewers, sewage disposal, or sewage purification plants when the construction of these

facilities has been ordered by the Environmental Management Commission, which Commission is hereby authorized to make such an order, or by a court of competent jurisdiction.

(5) Bonds or notes issued for erosion control purposes.

(6) Bonds or notes issued for the purpose of erecting jetties or other protective works to prevent encroachment by the ocean, sounds, or other bodies of water."

Sec. 4. G.S. 159-148(a)(3) reads as rewritten:

"(3) Obligates the unit over the full term of the contract, including periods that may be added to the original term through the exercise of options to renew or extend, to the extent of five hundred thousand dollars ($500,000) or a sum equal to one tenth of one percent (1/10 of 1%) of the ~~appraised~~ assessed value of property subject to taxation by the contracting ~~unit (before the application of any assessment ratio),~~ unit, whichever is less, and".

Sec. 5. G.S. 159-150 reads as rewritten:

"*§ 159-150. Sworn statement of debt; debt limitation.*

After or at the time an application is filed under G.S. 159-149, the finance officer, or some other officer designated by the board, shall prepare, swear to, and file with the secretary and for public inspection in the office of the clerk to the board a statement of debt in the same form prescribed in G.S. 159-55 for statements of debt filed in connection with general obligation bond issues. The sums to be included in gross debt and the deductions therefrom to arrive at net debt shall be the same as prescribed in G.S. 159-55, except that sums to fall due under contracts subject to this Article shall be treated as if they were evidenced by general obligation bonds of the unit.

No contract subject to this Article may be executed if the net debt of the contracting unit, after execution of the contract, would exceed eight percent (8%) of the ~~appraised~~ assessed value of property subject to taxation by the contracting ~~unit before the application of any assessment ratio.~~ unit."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of March, 1991.

H.B. 32 **CHAPTER 12**

AN ACT TO REENACT AN ACT WHICH EXPIRED JANUARY 1, 1991, WHICH SIMPLIFIED THE REQUIREMENTS FOR ELECTION DAY VOTER TRANSFERS.

Whereas, the 1989 General Assembly in House Bill 405, ratified as Chapter 427 of the 1989 Session Laws, simplified the procedure for election day voter transfers; and

Whereas, that act was temporary in nature and expired at the end of 1990; and

Whereas, that act should be reenacted and made permanent; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-72.3 reads as rewritten:

"*§ 163-72.3. Change of address on election day; authorization to vote.*

(a) A registered voter who has moved from one precinct to another within the same county more than 30 days before a primary or election, but who has not submitted a change of address report as provided in G.S. 163-72.2, nevertheless may vote under the following procedure:

(1) On the day of the primary or election the voter must go to the polling place for the precinct at which the voter is registered. If the precinct at which the voter is registered is not open for that election, the voter shall go instead to the county board of elections office or to another location designated by the board, at which place a board employee or election official designated by the board shall issue the certificate of removal and perform the other duties specified below for the precinct officials.

(2) Upon determining that the voter is registered in that precinct but moved more than 30 days before, the precinct registrar, precinct assistant appointed under G.S. 163-42, or a judge shall issue to the voter a certificate of removal on the following form:

'NOTICE OF ELECTION DAY TRANSFER

(name of voter as it appears in registration records)

On this day .....,

(address on voter's record)

recorded as residing at .....,

appeared before the undersigned precinct official. This person has not voted this date in this precinct and hereby requests that he or she be permitted to vote after executing the required transfer certificate.

.....

Registrar or Judge

.....

Name and number of precinct

.....
Signature of voter

TAKE THIS CERTIFICATE TO THE COUNTY BOARD OF ELECTIONS'.

(3) Upon issuance of the certificate to the voter, the precinct official shall mark the voter's registration record with a 'T' in the appropriate voting square to indicate that the voter has transferred.

(4) The voter shall take the certificate of removal to the precinct transfer assistant at the county board of elections' office. Upon determining that the voter moved more than 30 days before the election, that the voter now resides in another precinct within the county, and that the voter is otherwise qualified to vote in the election, the precinct transfer assistant shall have the voter complete the proper precinct transfer forms. The precinct transfer assistant shall then provide the voter with the proper ballots, or access to the proper voting equipment, for the precinct where the voter now resides. If the voter fails to take the certificate of removal to the precinct transfer assistant at the county board of elections' office by the time the polls close on election day, the voter may at a later date submit a change of address report under G.S. 163-72.2 to become effective as provided by law.

(5) After marking the ballots, or using the voting equipment in a booth or separate room provided for ~~that purpose~~ voting, the voter shall place the ballots, if any, ~~in an envelope provided by the precinct transfer assistant. That envelope shall have printed or stamped on it the following:~~

~~Transfer voter ballot # .....~~

~~Assigned precinct .....~~

~~The precinct transfer assistant shall write the proper information in the blanks before giving the envelope to the voter~~ in the proper ballot box.

(6) The precinct transfer assistant shall enter in a book provided by the board of elections the name of each voter permitted to vote under this section, ~~the number assigned to the voter's ballot and envelope,~~ the precinct in which the voter was previously registered, and the precinct to which the voter has transferred.

(7) ~~Envelopes containing ballots voted under this section shall be retained to be opened and the ballots counted after the polls close on election day.~~ Ballots voted at the board office shall be counted after the polls have closed by board members or

assistants appointed by the board. Ballots voted at other locations shall be counted by the precinct transfer assistants assigned to those locations, aided by precinct officials or ballot counters for those locations, provided that if the other location is the polling place at which the person would have voted if a change of address report had been filed under G.S. 163-72.2 prior to the close of registration for the election, the ballots shall be counted in the same manner as those of other voters. At each location ~~all envelopes shall be opened and all ballots deposited in the appropriate boxes before any ballots are counted, and~~ other than the polling place at which the person would have voted if a change of address report had been filed under G.S. 163-72.2 prior to the close of registration for the election, the results of the counting shall be entered on duplicate transfer report forms signed by the officials responsible for the counting.

~~If the county board of elections designates a precinct voting place as a location for voting under this section, and only voters who now reside in that precinct are permitted to vote transfer ballots there, the board may direct the precinct officials to place the transfer ballots in the appropriate precinct ballot boxes immediately after the polls close and to count and report the results of the transfer ballots together with all other ballots voted in the precinct.~~

(8) A person voting under this section shall be entitled to the same assistance as provided in G.S. 163-152.

(9) The precinct officials and precinct transfer assistant may require a person to show identification if needed to establish that the person is entitled to vote under this section.

(b) The county board of elections shall either designate a board employee or appoint another person to serve as a precinct transfer assistant. County boards of elections in counties with 70,000 or more registered voters may appoint two precinct transfer assistants, and boards in counties with 100,000 or more registered voters may appoint three assistants. In addition, board members and employees may perform the duties of a precinct transfer assistant.

(c) The board may appoint precinct transfer assistants in addition to those authorized by subsection (b) and assign them to locations other than the board of elections' office~~, provided the board adopts a resolution approving such additional appointments and gives written notice to the State Board of Elections of the additional locations at least 60 days before the election~~. The board may provide that each polling place open for an election shall be an additional location, and that each voter shall, after receiving a certificate under subdivision (2) of

subsection (a), go to vote at the polling place where they would have been assigned if they had filed a change of address report under G.S. 163-72.2 prior to the time that registration closed for the election. If such provision is made, the registrar, judge, or precinct assistant issuing a certificate under subdivision (2) of subsection (a) shall notify the voter of the location of such polling place. If additional locations are established, the county board may make the appropriate changes in the forms and procedures to be used under subsection (a). To exercise any option permitted to it in this subsection, the county board of elections shall adopt a resolution and give written notice to the State Board of Elections at least 60 days before the election. The notice shall include the additional locations at which transfer voting will be allowed.

(d) Each precinct transfer assistant shall be paid at least thirty-five dollars ($35.00) for the duties performed on election day, and may be paid additional compensation as recommended by the board of elections and authorized by the board of county commissioners."

Sec. 2. This act reenacts without change, and makes permanent, the expired provisions of Chapter 427, Session Laws of 1989.

Sec. 3. This act becomes effective with respect to primaries and elections held on or after 30 days after effectiveness of this act under Section 5 of the Voting Rights Act of 1965.

In the General Assembly read three times and ratified this the 21st day of March, 1991.

H.B. 4 **CHAPTER 13**

AN ACT TO PROVIDE THAT SAMPSON COUNTY IS AUTHORIZED TO CONSTRUCT GAS LINES.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 433, Session Laws of 1985, as amended by Chapter 839, Session Laws of 1989, reads as rewritten:

"Sec. 3. This act applies only to Stanly County, except that Section 1 also applies to Bladen ~~County~~ and Sampson Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of March, 1991.

H.B. 112 **CHAPTER 14**

AN ACT RELATING TO THE MANNER OF FILLING VACANCIES IN THE OFFICE OF REGISTER OF DEEDS OF EDGECOMBE AND LINCOLN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-5(a1) reads as rewritten:

"(a1) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds were elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy. Counties subject to this subsection are not subject to subsection (a). This subsection shall apply only in the following counties: Alamance, Alleghany, Ashe, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Surry, Transylvania, Wake, Watauga, and Yancey."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of March, 1991.

H.B. 138 **CHAPTER 15**

AN ACT TO PROVIDE THAT IN FILLING A VACANCY IN THE OFFICE OF SHERIFF OF EDGECOMBE AND LINCOLN COUNTIES, THE COUNTY BOARD OF COMMISSIONERS MUST APPOINT THE NOMINEE OF THE PARTY EXECUTIVE COMMITTEE OF THE VACATING SHERIFF.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-5.1 reads as rewritten:

"*§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.*

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for the residue of the term,

who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority.

This section shall apply only in the following Counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Madison, McDowell, Mecklenburg, Moore, New Hanover, Onslow, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of march, 1991.

H.B. 197 **CHAPTER 16**

AN ACT TO ALLOW THE TOWN OF STALLINGS TO OPERATE A CONTRACT POST OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-311 is amended by adding a new subsection to read:

"(11) United States Post Office facility, under contract with the United States Postal Service."

Sec. 2. This act applies to the Town of Stallings only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of March, 1991.

S.B. 90 **CHAPTER 17**

AN ACT TO PROVIDE FOR A NINETY-DAY PERIOD OF TIME FOR THE RENEWAL OF DRIVERS LICENSES, TO WAIVE THE CIVIL PENALTY FOR LAPSED LIABILITY INSURANCE, AND TO WAIVE THE SERVICE CHARGE FOR REREGISTRATION OF A VEHICLE OF MILITARY PERSONNEL DEPLOYED IN SUPPORT OF "OPERATION DESERT SHIELD" OR "OPERATION DESERT STORM."

The General Assembly of North Carolina enacts:

Section 1. A drivers license issued to a deployed soldier under G.S. 20-7 that would have otherwise expired during the soldier's deployment is automatically extended until 90 days after the soldier returns to North Carolina or two years from the expiration date of the drivers license, whichever occurs first.

Sec. 2. A temporary drivers license issued to a deployed soldier under G.S. 20-7 that would have otherwise expired 30 days after the soldier returns to North Carolina is automatically extended until 90 days after the soldier returns to North Carolina.

Sec. 3. The civil penalty and restoration fee under G.S. 20-309 do not apply to a deployed soldier whose motor vehicle liability insurance lapsed during the period of deployment or within 90 days after the soldier returned to North Carolina if the soldier certifies to the Division of Motor Vehicles that the motor vehicle was not driven on the highway by anyone during the period in which the motor vehicle was uninsured and that the owner now has liability insurance on the motor vehicle.

Sec. 4. As used in this act, a deployed soldier is a member of the armed forces of the United States on active duty or a member of the North Carolina National Guard or the North Carolina Air National Guard on active duty who was deployed outside the State in support of "Operation Desert Shield" or "Operation Desert Storm" on or after August 6, 1990. A copy of the soldier's military orders specifying the deployment is conclusive evidence of the soldier's deployment.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1991.

S.B. 119 **CHAPTER 18**

AN ACT TO REMOVE THE SUNSET ON THE ACT REQUIRING THAT HEADLIGHTS BE ILLUMINATED WHEN WINDSHIELD WIPERS ARE ON TO MAKE THAT VEHICLE

MORE DISCERNIBLE DURING PERIODS OF LIMITED VISIBILITY.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 822 of the 1989 Session Laws reads as rewritten:

"Sec. 3. This act shall become effective October 1, 1990. ~~Section 1 shall expire on June 30, 1991.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1991.

S.B. 144 **CHAPTER 19**

AN ACT TO EXTEND THE DEADLINE TO APRIL 1, 1991, FOR THE DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT TO MAKE ITS FIRST REPORT ASSESSING THE RECYCLING INDUSTRY AND MARKETS FOR RECYCLABLE MATERIALS IN THE STATE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 130A-309.14(c), the Department of Economic and Community Development shall make its first report pursuant to G.S. 130A-309.14 assessing the recycling industry and markets for recyclable materials in the State no later than April 1, 1991.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of March, 1991.

H.B. 228 **CHAPTER 20**

AN ACT TO DELAY BY THREE MONTHS THE REQUIREMENT THAT RESIDENT INSPECTORS BE ASSIGNED TO COMMERCIAL HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1082 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"Sec. 2. The Department of Environment, Health, and Natural Resources shall report quarterly to the Joint Legislative Commission on Governmental Operations and the Environmental Review Commission beginning 1 ~~April~~ July 1991 on the implementation of the resident inspectors program. The receipts and expenditures provided

for by this act shall appear as a separate expansion budget request for the 1991-93 biennium."

Sec. 2. Section 3 of Chapter 1082 of the 1989 Session Laws, 1990 Regular Session, reads as rewritten:

"Sec. 3. This act shall become effective 1 January 1991 as to the assessment and collection of fees and shall become effective 1 ~~March~~ June 1991 as to all other provisions."

Sec. 3. This act is effective retroactively as of 28 February 1991.

In the General Assembly read three times and ratified this the 27th day of March, 1991.

H.B. 111 **CHAPTER 21**

AN ACT TO REMOVE THE SUNSET ON THE MUNICIPAL PARTICIPATION IN IMPROVEMENTS TO THE STATE HIGHWAY SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-66.3(f) reads as rewritten:

"(f) Municipalities having a population of less than 10,000 according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer shall not participate in the right-of-way and construction costs of any State highway system improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4).

Municipalities having a population of 10,000 or more according to the most recent annual estimates of population as certified to the Secretary of Revenue by the State Budget Officer may, but shall not be required by the Department or Board of Transportation, participate up to a maximum percentage as shown below in the cost of rights-of-way of the portion of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350(f)(4) that is located within the municipal corporate limits:

Municipal Population	Maximum Participation In Right-of-Way Costs
10,000 - 25,000	5%
25,001 - 50,000	10%
50,001 - 100,000	15%
over 100,000	25%

~~This authority to allow a municipality to participate in the right-of-way costs of any transportation improvement project approved by the Board of Transportation under G.S. 143B-350 (f)(4) that is located within the municipal corporate limits shall expire on June 30, 1992.~~

Any participation shall be set forth in an agreement between the municipality and the Department of Transportation. Upon request of the municipality, the Department of Transportation shall allow the municipality a period of not less than three years from the date construction of the project is initiated to reimburse the Department their agreed upon share of the costs of rights-of-way necessary for the project. The Department of Transportation shall not charge a municipality any interest on its agreed upon share of rights-of-way costs. The Secretary shall report in writing, on a monthly basis, to the Joint Legislative Commission on Governmental Operations on all agreements entered into between municipalities and the Department of Transportation. The report shall state in summary form the contents of such agreements."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of March, 1991.

S.B. 56 **CHAPTER 22**

AN ACT TO AUTHORIZE THE CITY OF GREENSBORO TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Levy of Tax.

(a) The Greensboro City Council may, by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a city-wide room occupancy and tourism development tax in addition to any other occupancy tax authorized for Guilford County.

(b) Collection of the tax, and liability therefor, shall begin and continue only on and after the first day of a calendar month set by the city council in the resolution levying the tax which may in no case be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

Sec. 2. Occupancy Tax.

The city room occupancy and tourism development tax that may be levied under this act shall be three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourism camp, or

other similar place within the City of Greensboro which is subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales or occupancy tax.

Sec. 3. Exemptions.

The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) Religious organizations;
(2) A business that offers to rent fewer than five units;
(3) Educational organizations;
(4) Summer camps; and
(5) Charitable, benevolent, and other nonprofit organizations.

Sec. 4. Administration of Tax.

(a) The City of Greensboro may contract with Guilford County to collect and administer a tax levied under this act. The tax is due and payable to the city in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(b) A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the occupancy tax is paid. The city council may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return and who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

Sec. 5. Collection of Tax.

Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and

charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city or the county shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Sec. 6. Disposition of Taxes Collected.

(a) Until retirement of the debt to finance renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection. The city or the county shall remit twenty percent (20%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. "Net proceeds" means gross proceeds less the cost to the city or the county of administering and collecting the tax, not to exceed five percent (5%) of the gross proceeds of the tax. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

The City of Greensboro shall receive the balance of the net proceeds and shall use these funds only to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena. In the event that these funds exceed the amount required for debt payments, the excess shall be retained in a special reserve fund and used (i) to make debt payments where additional funds are needed in any payment period, (ii) to call a portion of the debt, or (iii) to pay for maintenance to the arena.

(b) Upon retirement of the full debt to finance the renovation and expansion of the Greensboro War Memorial Coliseum arena, the proceeds of the occupancy tax shall be used as provided in this subsection. The city or the county shall remit twenty-five percent (25%) of the net proceeds of the tax to the Greensboro/Guilford County Tourism Development Authority. The authority shall use the funds remitted to it under this subsection only for activities and programs promoting and encouraging travel and tourism.

The city shall receive the balance of the net proceeds and shall use these funds only (i) for specific tourist-related events, programs, and activities, such as arts, recreational, or cultural events, or (ii) for promoting, improving, constructing, financing, or acquiring facilities or attractions that enhance the development of tourism. Before expending the proceeds for any of the purposes listed in this subsection, the city shall submit each project to the Greensboro/Guilford County Tourism Development Authority. The board of directors of that authority shall make recommendations to the

city with respect to the projects within 60 days after submission by the city.

Sec. 7. Contracts Authorized.

The City of Greensboro may contract with any nonprofit organization to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The Greensboro/Guilford County Tourism Development Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended.

Sec. 8. Reports.

The Greensboro/Guilford County Tourism Development Authority and the City of Greensboro shall report quarterly and at the close of the fiscal year to the city council on their receipts and expenditures for the preceding quarter and for the year in such detail as the council may require. The Greensboro/Guilford County Tourism Development Authority shall submit its annual budget for the funds provided in this act to the Greensboro City Council for approval prior to adoption by the authority. This action does not, however, incorporate the authority's budget into the annual operating budget of the City of Greensboro. The authority shall furnish its annual audit to the Greensboro City Council.

Sec. 9. Repeal of Levy.

The Greensboro City Council may, by resolution, repeal the tax levied under this act, but the repeal may not become effective until the debt for the renovation and expansion of the Greensboro War Memorial Coliseum arena has been retired. In addition, the repeal may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

S.B. 142 **CHAPTER 23**

AN ACT TO APPLY THE REQUIREMENT THAT PLASTIC BAGS DISTRIBUTED AT RETAIL OUTLETS HAVE WRITTEN NOTIFICATION OF RECYCLABILITY ON THE BAG ONLY TO BAGS PURCHASED BY THE RETAILER AFTER 1 JANUARY 1991.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.10(c) reads as rewritten:

"(c) (1) After 1 January 1991, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the bag is composed of material which is recyclable. Notice of recyclability shall be printed on each bag purchased by the retailer after 1 January 1991.

(2) After 1 January 1993, no plastic bag shall be provided at any retail outlet to any retail customer to use for the purpose of carrying items purchased by that customer unless the Secretary certifies that not less than twenty-five percent (25%) of such bags are being recycled."

Sec. 2. This act is effective on and after 1 January 1991.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

S.B. 223 **CHAPTER 24**

AN ACT TO AUTHORIZE THE MONTGOMERY COUNTY BOARD OF EDUCATION TO CONVEY CERTAIN PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Montgomery County Board of Education may convey or release by good and sufficient deed at private sale, with or without compensation, any or all of its rights, title and interest in the property described below, to the Montgomery County Association For Retarded Citizens, Inc.:

A tract or parcel of land lying and being in the Town of Biscoe, Biscoe Township, Montgomery County, North Carolina, being west of Railroad Avenue and northeast of the Biscoe School, more particularly described as follows:

Beginning at a railroad spike found in the pavement of Railroad Street, this being the northeast corner of the land in the deed from Tom Mae Coggin, et al (Deed Book 192 Page 651) which this is a part, thence with the east line and the pavement of said street S 2°41'51" E 124.52 feet to a point in the old east line, being N 2°41'51" W 17.53 feet from a railroad spike found, which is the old southeast corner, thence with two (2) new lines S 88°49'33" W crossing a pipe set at 27.69 feet, continuing for a total distance of 427.74 feet to a pipe set, being N 26°55'23" E 37.32 feet from a corner of the old school building, thence N 1°02'27" W 132.40 feet to a pipe found in the old north line, thence with the old line N 89°53'43" E 424.20 feet to the

beginning, containing 1.26 acres, more or less, as shown on a plat for Montgomery County School Board, dated October 12, 1990. This being the northeast part of the land in the deed from Tom Mae Coggins, et al to the Montgomery County Board of Education, dated April 5, 1979 and recorded in Deed Book 192 Page 651.

Sec. 2. Any deed conveying the property described above under this act shall require that if the Montgomery County Association For Retarded Citizens, Inc., discontinues its services or ceases for a continuous period of one year to use the property for carrying out its services, then the property reverts to the Montgomery County Board of Education.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 159 **CHAPTER 25**

AN ACT TO PREVENT A MUNICIPAL ORDINANCE OR POLICY DIMINISHING WATER OR SEWER SERVICES TO AN ANNEXED AREA WITHIN SIX MONTHS OF NOTICE OF INTENT TO CONSIDER ANNEXATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-35 reads as rewritten:

"*§ 160A-35. Prerequisites to annexation; ability to serve; report and plans.*

(a) A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-37, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The proposed extensions of water mains and sewer outfalls to serve the annexed area, if such utilities are operated by the municipality. The water and sewer map must bear the seal of a registered professional engineer or a licensed surveyor.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-36.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal

service performed within the municipality at the time of annexation. Specifically, such plans shall:

a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of water mains and sewer lines into the area to be annexed so that property owners in the area to be annexed will be able to secure public water and sewer services according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If the municipality must, at its own expense, extend water and/or sewer mains into the area to be annexed before property owners in the area can, according to municipal policies, make such connection to such lines, then the plans must call for contracts to be let and construction to begin on such lines within one year following the effective date of annexation.

c. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days

following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-37.1 and G.S. 160A-37.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) No ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-37(a)."

Sec. 2. G.S. 160A-47 reads as rewritten:

"*§ 160A-47. Prerequisites to annexation; ability to serve; report and plans.*

(a) A municipality exercising authority under this Part shall make plans for the extension of services to the area proposed to be annexed and shall, prior to the public hearing provided for in G.S. 160A-49, prepare a report setting forth such plans to provide services to such area. The report shall include:

(1) A map or maps of the municipality and adjacent territory to show the following information:
   a. The present and proposed boundaries of the municipality.
   b. The present major trunk water mains and sewer interceptors and outfalls, and the proposed extensions of such mains and outfalls as required in subdivision (3) of this section. The water and sewer map must bear the seal of a registered professional engineer.
   c. The general land use pattern in the area to be annexed.

(2) A statement showing that the area to be annexed meets the requirements of G.S. 160A-48.

(3) A statement setting forth the plans of the municipality for extending to the area to be annexed each major municipal service performed within the municipality at the time of annexation. Specifically, such plans shall:
   a. Provide for extending police protection, fire protection, solid waste collection and street maintenance services to the area to be annexed on the date of annexation on substantially the same basis and in the same manner as

such services are provided within the rest of the municipality prior to annexation. A contract with a rural fire department to provide fire protection shall be an acceptable method of providing fire protection. If a water distribution system is not available in the area to be annexed, the plans must call for reasonably effective fire protection services until such time as waterlines are made available in such area under existing municipal policies for the extension of waterlines. A contract with a private firm to provide solid waste collection services shall be an acceptable method of providing solid waste collection services.

b. Provide for extension of major trunk water mains and sewer outfall lines into the area to be annexed so that when such lines are constructed, property owners in the area to be annexed will be able to secure public water and sewer service, according to the policies in effect in such municipality for extending water and sewer lines to individual lots or subdivisions. If requested by the owner of an occupied dwelling unit or an operating commercial or industrial property in writing on a form provided by the municipality, which form acknowledges that such extension or extensions will be made according to the current financial policies of the municipality for making such extensions, and if such form is received by the city clerk not less than 30 days before adoption of the annexation ordinance, provide for extension of water and sewer lines to the property or to a point on a public street or road right-of-way adjacent to the property according to the financial policies in effect in such municipality for extending water and sewer lines. If any such requests are timely made, the municipality shall at the time of adoption of the annexation ordinance amend its report and plan for services to reflect and accommodate such requests.

c. If extension of major trunk water mains, sewer outfall lines, sewer lines and water lines is necessary, set forth a proposed timetable for construction of such mains, outfalls and lines as soon as possible following the effective date of annexation. In any event, the plans shall call for construction to be completed within two years of the effective date of annexation.

d. Set forth the method under which the municipality plans to finance extension of services into the area to be annexed.

(4) A statement of the impact of the annexation on any rural fire department providing service in the area to be annexed and a statement of the impact of the annexation on fire protection and fire insurance rates in the area to be annexed, if the area where service is provided is in an insurance district designated under G.S. 153A-233, a rural fire protection district under Article 3A of Chapter 69 of the General Statutes, or a fire service district under Article 16 of Chapter 153A of the General Statutes. The rural fire department shall make available to the city not later than 30 days following a written request from the city all information in its possession or control, including but not limited to operational, financial and budgetary information, necessary for preparation of a statement of impact. The rural fire department forfeits its rights under G.S. 160A-49.1 and G.S. 160A-49.2 if it fails to make a good faith response within 45 days following receipt of the written request for information from the city, provided that the city's written request so states by specific reference to this section.

(b) No ordinance or policy substantially diminishing the financial participation of a municipality in the construction of water or sewer facilities required under this Article may apply to an area being annexed unless the ordinance or policy became effective at least 180 days prior to the date of adoption by the municipality of the resolution giving notice of intent to consider annexing the area under G.S. 160A-49(a)."

Sec. 3. This act is effective upon ratification and applies to resolutions of intent adopted on or after March 1, 1992.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 194 **CHAPTER 26**

AN ACT TO ALLOW THE ELIZABETH CITY-PASQUOTANK COUNTY AIRPORT AUTHORITY TO ENTER INTO A LEASE WITH A FIXED BASE OPERATOR.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 198 of the 1987 Session Laws reads as rewritten:

"Sec. 4. The Airport Authority shall have the following powers and authority and is charged with the following duties:

(1) It shall have exclusive jurisdiction, control, supervision and management over airports owned by the City of Elizabeth City ~~and~~ and/or Pasquotank County. It shall have the power to let or lease any airport under its control or any portion of the same, including buildings and hangars thereon and to grant concessions in connection with the operation of the airport upon such terms and conditions as it shall deem proper. It shall have the authority to lease any airport under its control or any portion of the same, including buildings and hangars thereon, to a fixed base operator, and the provisions of G.S. 160A-272 shall not apply to any such lease. It shall have authority to charge and collect fees and rents for use of property or services furnished. It shall have the power to employ necessary personnel, including a director or manager and to fix the salaries and prescribe the duties thereof.

(2) It may acquire, establish, construct, own, control, lease, equip, improve, maintain, operate, and regulate airports or landing fields for the use of airplanes and other aircraft within Pasquotank County and may use for such purpose or purposes any property suitable therefor that is now or may at any time hereafter be owned or controlled by Elizabeth City or Pasquotank County.

(3) It shall make plans and projections with respect to acquisition, construction, operation, regulation, improving or maintaining airports of the Authority and their related facilities and in that connection secure necessary technical assistance and engineering.

(4) It shall be entitled to sue or be sued in its name as to matters to which it has authority and power as stated herein.

(5) It shall have authority to deal with the Federal Aviation Agency and any other federal or State agency respecting the airports, their facilities, operation and maintenance.

(6) It shall organize, and adopt and from time to time amend rules of operation and procedure."

Sec. 2. This act is effective upon ratification and applies to any lease entered into by the Elizabeth City-Pasquotank County Airport Authority after that date.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 215 **CHAPTER 27**

AN ACT TO MODIFY THE STATUTES GOVERNING THE CUMBERLAND MEMORIAL AUDITORIUM COMMISSION.

Whereas, the General Assembly, on April 28, 1965, created the Cumberland Memorial Auditorium Commission to provide the most efficient management and beneficial use and enjoyment of the Cumberland County Auditorium and its facilities; and

Whereas, there is a need to change the name, organization, and functions of the Cumberland Memorial Auditorium Commission; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 360 of the 1965 Session Laws, as amended by Section 6 of Chapter 983 of the 1984 Session Laws, reads as rewritten:

"(a) Cumberland ~~Auditorium~~ County Civic Center Commission. There is hereby created in Cumberland County a commission to be known as the Cumberland ~~Memorial Auditorium~~ County Civic Center Commission which shall have the powers and duties hereinafter set forth.

(b) Membership; Terms of Office. ~~The Commission shall consist of fifteen (15) members who shall be residents of Cumberland County appointed by the Board of County Commissioners of Cumberland County immediately after the date when this Act becomes effective.~~ The Commission shall consist of 16 members. Fifteen members shall be residents of Cumberland County and shall be appointed by the Board of County Commissioners. The sixteenth member shall be the County Manager of Cumberland County who shall serve in an ex officio and nonvoting capacity and without limit as to term.

(1) Five ~~(5)~~ of the first members of the Commission shall be appointed for a term of one ~~(1)~~ year, five ~~(5)~~ for a term of two ~~(2)~~ years, and five ~~(5)~~ for a term of three ~~(3)~~ years. Upon the expiration of each of the terms, the Board of County Commissioners shall appoint successor members of the Commission who shall each serve for terms of three ~~(3)~~ years and until their successors are appointed for like terms. Any member of the Commission may be reappointed for successive terms.

(2) Vacancies occurring on the Commission otherwise than by expiration of a term shall be filled by appointment for the unexpired term of the vacant office.

(3) From its membership the Commission shall at its first meeting, and annually thereafter, elect a ~~chairman, vice-chairman, and secretary.~~ Chairman, Vice-Chairman, and Secretary. These officers shall hold office for one year or until their successors are duly elected. ~~The County Manager of Cumberland County shall by virtue of his office~~

~~also be the treasurer of the Commission. All funds received or handled by the Commission shall be subject to the control of the treasurer who shall prescribe the way and manner all such funds shall be collected, held, disbursed and accounted for. A yearly budget shall be prepared and submitted to the County Board of Commissioners for approval along with any request for an operation attached levy or any request for public funds to be used in the operation of the auditorium facilities. The Board of County Commissioners shall select the auditor of the Commission's accounts.~~

(4) The officers elected together with ~~one other member~~ two other members of the Commission, who will also be elected at the first meeting of the Commission and annually thereafter, shall constitute the Executive Committee of the Commission. ~~In order to provide for the most efficient operation of the business of the Commission, the Executive Committee shall have sole power and authority over the management and operation of the facilities and to conduct the Commission's business within the policies as are from time to time adopted by the Commission, and all powers and authority not specifically reserved for action of the full Commission under its bylaws shall be vested in the Executive Committee.~~ The Executive Committee shall perform those duties and functions specified in the bylaws of the Commission.

(5) Regular meetings of the Commission shall be held ~~quarterly and special~~ monthly. Special meetings may be called by the ~~chairman or any two (2) members of the Executive Committee upon twenty-four 24 hours' written notice to the members stating the purpose of the meeting.~~ Chairman or a majority of the voting members of the Commission. Attendance of ~~not less than~~ eight ~~(8)~~ members shall constitute a quorum for the purpose of transaction of business at any regular or special meeting.

(6) The Commission may adopt, and from time to time amend, bylaws to implement its organization and provide for the orderly conduct of its affairs.

(7) All funds received or handled by the Commission shall be subject to the control of the Finance Officer of Cumberland County who shall prescribe the way and manner these funds shall be collected, held, disbursed and accounted for. The Board of County Commissioners shall select the Auditor of the Commission's accounts.

(8) The Commission shall prepare an annual budget and submit it to the Board of County Commissioners for approval, in a format prescribed by the County Manager, along with any requests for capital improvements or any requests for public funds to be used in the construction or operation of the Civic Center facilities.

(c) Powers, Purpose and Duties of Commission. The powers, purpose and duties of the Cumberland ~~Memorial Auditorium~~ County Civic Center Commission shall include:

(1) The establishment and management of a memorial fund as a means by which donations may be solicited, received and used in the construction, equipment, decoration, maintenance or operation of the ~~auditorium,~~ Civic Center, its allied facilities and grounds and appropriate recognition made to the memory of persons to be memorialized.

(2) To assist, in advisory capacity, the Board of County Commissioners in planning for and construction of the facility, and carry out any duty or assignment expressly delegated to it by resolution of the Board of County Commissioners.

(3) To operate the ~~public auditorium~~ Civic Center facility under the terms and conditions prescribed by the Board of County Commissioners.

(4) To study, plan, and program for the highest and best use of the facilities committed to it for public use, edification and enjoyment.

(5) The power to make such reasonable rules and regulations for its own proper organization and procedure and the management, use, control, improvement, equipment, upkeep, and safekeeping of the facilities, properties, and funds committed to its charge, including the receipts and expenditures of such funds committed to its charge, including the receipts and expenditures of such funds as may be or become available for the improvement or management thereof and the use of such facilities as well as spectators' or participants' entrance fees and provided such rules and regulations do not conflict with and are not inconsistent with the laws of the State of North Carolina or ordinances of Cumberland County.

(6) The employment of a manager and ~~such~~ other employees as may be necessary for the proper implementation of the purposes and duties of the Commission.

(7) The power to contract and be contracted with, to rent, acquire, hold, exchange, transfer and convey property of any

kind, to sue and be sued in its own name or the Cumberland ~~Memorial Auditorium~~ County Civic Center Commission as a corporate body by its officers in the same manner, as a business corporation subject to the limitations herein contained.

(d) Limitation on Powers. The Commission shall not have the power to perform the following:

(1) Mortgage or encumber property owned by it or under its control or supervision otherwise than as herein provided.

(2) Borrow money from any source whatsoever, but the Cumberland County Board of Commissioners may in its discretion advance and lend to the Commission in anticipation of uncollected taxes such sums, not exceeding in the aggregate at any time the total amount of taxes theretofore levied for the purposes of the Commission and the remaining uncollected, and shall reimburse itself for such amounts out of such taxes as and when collected. Provided also these limitations shall not be construed to prohibit purchases by the Commission on a time or deferred payment plan or purchase contract.

(3) Use any property or funds belonging to the Commission or under its control for any pecuniary gain whatsoever of any member of the Commission, nor shall the Commission purchase from, contract with, nor grant license or concession to any person, firm or corporation in which any member of the Commission has a monetary interest directly or indirectly.

(4) Collect, receive, deposit, disburse, or otherwise handle, and account for all funds only in such manner as is prescribed by the ~~Treasurer~~ Finance Officer of Cumberland County.

(5) No member of the Commission shall receive or accept any fee, gratuity or thing of value in payment for any act to be done or not to be done by the Commission save and except such salary as may be prescribed by the Board of County Commissioners.

(6) Upon dissolution of the Commission or upon termination of its connection with the operation of the facilities by resolution of the Board of County Commissioners, all funds and property acquired, held or accumulated by the Commission shall become the funds and property of Cumberland County."

Sec. 2. Section 3 of Chapter 360 of the 1965 Session Laws, as amended by Section 6 of Chapter 983 of the 1984 Session Laws, reads as rewritten:

"Sec. 3. Special auditorium tax funds, if authorized and levied, and nontax revenues may, in the discretion of the Board of County Commissioners, be turned over to the Commission to be used in operating, equipping, improving and maintaining. Occupancy tax revenues as authorized in AN ACT TO AUTHORIZE AND IMPLEMENT AN OCCUPANCY TAX IN CUMBERLAND COUNTY may be utilized by the ~~Auditorium~~ County Civic Center Commission, as approved by the ~~board of county commissioners,~~ Board of County Commissioners, in aiding and encouraging convention and visitor promotion in Cumberland County."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 247 **CHAPTER 28**

AN ACT TO PROVIDE FOR THE ESTABLISHMENT OF A VOLUNTEER POLICE AUXILIARY FOR THE MECKLENBURG COUNTY POLICE DEPARTMENT.

The General Assembly of North Carolina enacts:

Section 1. The Board of Commissioners of Mecklenburg County may by proper resolution provide for the organization, recruiting, training, equipping, and appointing of auxiliary police officers for Mecklenburg County and prescribe the duties and responsibilities of such auxiliary police officers.

Sec. 2. The Mecklenburg County Auxiliary Police Force and its members shall not be under the Civil Service Board but shall be excepted therefrom and if so ordered by the Board of Commissioners of Mecklenburg County, shall serve directly under and be responsible to the Chief of the Mecklenburg County Police Department whom the Board of Commissioners of Mecklenburg County may also authorize and direct to develop standards and regulations for employment, discipline, regulations and procedures for the operation of the volunteer police auxiliary force and for the dismissal of members of said police auxiliary. The Chief of the Mecklenburg County Police Department shall make provisions for uniforms, weapons, and for such other matters and things as shall be reasonably necessary in carrying out the functions of a voluntary police auxiliary force.

Sec. 3. Auxiliary police officers shall not be entitled to compensation for their services unless called into active duty by the Board of Commissioners of Mecklenburg County, or by such person as the Board of Commissioners of Mecklenburg County may designate, because of any emergency in which event they may receive

such compensation for their services as shall be fixed by the Board of Commissioners of Mecklenburg County. Auxiliary police officers shall not be entitled to any benefits or compensation other than those provided by or pursuant to this section; however, this subsection shall not in any manner affect the rights of any person to benefits provided by the State of North Carolina or by act of Congress for civilian defense workers or auxiliary police officers.

Sec. 4. Members of the Mecklenburg County Auxiliary Police Force shall, when certified as members thereof and when on active duty, have the same police powers and powers of law enforcement officers as regular members of the Mecklenburg County Police Department.

Sec. 5. Mecklenburg County shall be entitled to the same immunities with respect to the action of auxiliary policemen in the performance of their duties in training or otherwise as to which it is entitled with respect to the actions of regular members of the Mecklenburg County Police Department in the performance of their duties.

Sec. 6. The volunteer police auxiliary hereby contemplated is a volunteer organization and therefore the Board of Commissioners of Mecklenburg County or the persons so delegated by the Board may require as a prerequisite to service in the volunteer police auxiliary force that the prospect member enter into a release agreement which would release Mecklenburg County from liability for any accident, injury or death incurred while on duty.

Sec. 7. This act shall be applicable to Mecklenburg County only.

Sec. 8. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 263 **CHAPTER 29**

AN ACT TO AUTHORIZE ANSON, MONTGOMERY, AND RICHMOND COUNTIES TO ENTER INTO LONG-TERM CONTRACTS FOR DISPOSAL OF SOLID WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-299.6 reads as rewritten:

"§ *153A-299.6. Applicability.*

This Part shall apply only to Anson County, Beaufort County, Carteret County, Craven County, Davie County, Edgecombe County,

Gaston County, Hyde County, Lenoir County, Martin County, Montgomery County, New Hanover County, Pamlico County, Pitt County, Richmond County, Rowan County, Rutherford County, Washington County, Wayne County, Wilson County, and to any and all incorporated cities and towns situated within the foregoing counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of April, 1991.

H.B. 13 **CHAPTER 30**

AN ACT TO ELIMINATE THE FRANCHISE TAX INITIAL RETURN AND TO INCREASE THE MINIMUM FRANCHISE TAX.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-123 is repealed.

Sec. 2. G.S. 105-114(a) reads as rewritten:

"(a) Nature of Taxes. The taxes levied in this Article upon persons and partnerships are for the privilege of engaging in business or doing the act named. The taxes levied in this Article upon corporations are privilege or excise taxes levied upon:

(1) Corporations organized under the laws of this State for the existence of the corporate rights and privileges granted by their charters, and the enjoyment, under the protection of the laws of this State, of the powers, rights, privileges and immunities derived from the State by the form of such existence; and

(2) Corporations not organized under the laws of this State for doing business in this State and for the benefit and protection which such corporations receive from the government and laws of this State in doing business in this State.

If the corporation is organized under the laws of this State, the payment of the taxes levied by this Article shall be a condition precedent to the right to continue in such form of organization; and if the corporation is not organized under the laws of this State, payment of these taxes shall be a condition precedent to the right to continue to engage in doing business in this State. The taxes levied in this Article or schedule shall be for the fiscal year of the State in which the taxes become due; except that the taxes levied in G.S. 105-122 ~~and G.S. 105-123~~ shall be for the income year of the corporation in which the taxes become due."

Sec. 3. G.S. 105-120.1 reads as rewritten:

"*§ 105-120.1. Franchise or privilege tax on street bus or similar street transportation system for the transportation of passengers for hire.*

(a) Every person, firm or corporation, domestic or foreign, other than municipal corporations, owning and/or operating a street railway, street bus or similar street transportation system for the transportation of passengers for hire shall on or before the first day of June of each year pay to the Secretary of Revenue an annual franchise or privilege tax in the amount of ~~twenty-five dollars ($25.00).~~ thirty-five dollars ($35.00).

(b) Businesses taxed under this section shall not be required to pay the franchise tax imposed by G.S. 105-122 ~~or 105-123~~ and no county, city or town shall impose a franchise, license or privilege tax upon the business taxed under this section."

Sec. 4. G.S. 105-120.2(b)(1) reads as rewritten:

"(b)(1) Every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied, at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the amount determined under subsection (a) of this section, but in no case shall the tax be more than seventy-five thousand dollars ($75,000) nor less than ~~twenty-five dollars ($25.00).~~ thirty-five dollars ($35.00)."

Sec. 5. G.S. 105-122(d) reads as rewritten:

"(d) After determining the proportion of its total capital stock, surplus and undivided profits as set out in subsection (c) of this section, which amount so determined shall in no case be less than fifty-five percent (55%) of the appraised value as determined for ad valorem taxation of all the real and tangible personal property in this State of each such corporation plus the total appraised value of intangible property returned for taxation of intangible personal property as herein specified nor less than its total actual investment in tangible property in this State, every corporation taxed under this section shall annually pay to the Secretary of Revenue, at the time the report and statement are due, a franchise or privilege tax, which is hereby levied at the rate of one dollar and fifty cents ($1.50) per one thousand dollars ($1,000) of the total amount of capital stock, surplus and undivided profits as herein provided. The tax imposed in this section shall in no case be less than ~~twenty-five dollars ($25.00)~~ thirty-five dollars ($35.00) and shall be for the privilege of carrying on, doing business, and/or the continuance of articles of incorporation or domestication of each such corporation in this State. Appraised

value of tangible property including real estate shall be the ad valorem valuation for the calendar year next preceding the due date of the franchise tax return. Appraised value of intangible property shall be the total gross valuation required to be reported for intangible tax purposes on April 15 coincident with or next preceding the due date of the franchise tax return. The term 'total actual investment in tangible property' as used in this section shall be construed to mean the total original purchase price or consideration to the reporting taxpayer of its tangible properties, including real estate, in this State plus additions and improvements thereto less reserve for depreciation as permitted for income tax purposes, and also less any indebtedness incurred and existing by virtue of the purchase of any real estate and any permanent improvements made thereon. In computing 'total actual investment in tangible personal property' there shall also be deducted reserves for the entire cost of any air-cleaning device or sewage or waste treatment plant, including waste lagoons, and pollution abatement equipment purchased or constructed and installed which reduces the amount of air or water pollution resulting from the emission of air contaminants or the discharge of sewage and industrial wastes or other polluting materials or substances into the outdoor atmosphere or into streams, lakes, or rivers, upon condition that the corporation claiming such deduction shall furnish to the Secretary a certificate from the Department of Environment, Health, and Natural Resources or from a local air pollution control program for air-cleaning devices located in an area where the Environmental Management Commission has certified a local air pollution control program pursuant to G.S. 143-215.112 certifying that said Department or local air pollution control program has found as a fact that the air-cleaning device, waste treatment plant or pollution abatement equipment purchased or constructed and installed as above described has actually been constructed and installed and that such device, plant or equipment complies with the requirements of the Environmental Management Commission or local air pollution control program with respect to such devices, plants or equipment, that such device, plant or equipment is being effectively operated in accordance with the terms and conditions set forth in the permit, certificate of approval, or other document of approval issued by the Environmental Management Commission or local air pollution control program and that the primary purpose thereof is to reduce air or water pollution resulting from the emission of air contaminants or the discharge of sewage and waste and not merely incidental to other purposes and functions. The cost of constructing facilities of any private or public utility built for the purpose of providing sewer service to residential and outlying areas shall be treated as deductible for the purposes of this section; the

deductible liability allowed by this section shall apply only with respect to such pollution abatement plants or equipment constructed or installed on or after January 1, 1955.

In determining the total tax payable by any corporation under this section, there shall be allowed as a credit on such tax the amount of the credit authorized by Division V of Article 4 of this Chapter."

Sec. 6. G.S. 105-125 reads as rewritten:

"*§ 105-125. Corporations not mentioned.*

None of the taxes levied in this Article shall apply to charitable, religious, fraternal, benevolent, scientific or educational corporations, not operating for a profit; nor to insurance companies; nor to mutual ditch or irrigation associations, mutual or cooperative telephone associations or companies, mutual canning associations, cooperative breeding associations, or like organizations or associations of a purely local character deriving receipts solely from assessments, dues, or fees collected from members for the sole purpose of meeting expenses; nor to cooperative marketing associations operating solely for the purpose of marketing the products of members or other farmers, which operations may include activities which are directly related to such marketing activities, and turning back to them the proceeds of sales, less the necessary operating expenses of the association, including interest and dividends on capital stock on the basis of the quantity of product furnished by them; nor to production credit associations organized under the act of Congress known as the Farm Credit Act of 1933; nor to business leagues, boards of trade, clubs organized and operated exclusively for pleasure, recreation and other nonprofitable purposes, civic leagues operated exclusively for the promotion of social welfare, or chambers of commerce and merchants' associations not organized for profit, and no part of the net earnings of which inures to the benefit of any private stockholder, individual or other corporations; nor to corporations or organizations, such as condominium associations, homeowner associations or cooperative housing corporations not organized for profit, the membership of which is limited to the owners or occupants of residential units in the condominium, housing development, or cooperative housing corporation, and operated exclusively for the management, operation, preservation, maintenance or landscaping of the common areas and facilities owned by such corporation or organization or its members situated contiguous to such houses, apartments or other dwellings or for the management, operation, preservation, maintenance and repair of such houses, apartments or other dwellings owned by the corporation or organization or its members, but only if no part of the net earnings of such corporation or organization inures (other than through the performance of related services for the members of such

corporation or organization) to the benefit of any member of such corporation or organization or other person. In addition, absent a specific provision to the contrary, the taxes levied in this Article do not apply to any organization that is exempt from federal income tax under the Code.

Provided, that each such corporation must, upon request by the Secretary of Revenue, establish in writing its claim for exemption from said provisions. The provisions of G.S. 105-122 ~~and 105-123~~ shall apply to electric light, power, gas, water, Pullman, sleeping and dining car, express, telegraph, telephone, motor bus, and truck corporations to the extent and only to the extent that the franchise taxes levied in G.S. 105-122 ~~and 105-123~~ exceed the franchise taxes levied in other sections of this Article or schedule; except that the provisions of G.S. 105-122 ~~and 105-123~~ shall not apply to businesses taxed under G.S. 105-120.1. The exemptions in this section shall apply only to those corporations specially mentioned, and no other.

Provided, that any corporation doing business in North Carolina which in the opinion of the Secretary of Revenue of North Carolina, qualifies as a 'regulated investment company' under section 851 of the Code or as a 'real estate investment trust' under the provisions of section 856 of the Code and which files with the North Carolina Department of Revenue its election to be treated as a 'regulated investment company' or as a 'real estate investment trust,' shall in determining its basis for franchise tax be allowed to deduct the aggregate market value of its investments in the stocks, bonds, debentures, or other securities or evidences of debt of other corporations, partnerships, individuals, municipalities, governmental agencies or governments."

Sec. 7. G.S. 105-127(a) reads as rewritten:

"(a) Every corporation, domestic or foreign, from which a report is required by law to be made to the Secretary of Revenue, shall, unless otherwise provided, pay to said Secretary annually the franchise tax as required by ~~G.S. 105-122 and 105-123.~~ G.S. 105-122."

Sec. 8. This act is effective for taxable years beginning on or after September 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of April, 1991.

S.B. 101 **CHAPTER 31**

AN ACT TO AUTHORIZE THE CITY OF GREENSBORO TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED TEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars ($5.00)~~ ten dollars ($10.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar ($1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab. All revenues derived from the tax levied pursuant to this section shall be allocated only for local public transportation purposes."

Sec. 2. This act applies only to the City of Greensboro.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of April, 1991.

S.B. 158 **CHAPTER 32**

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES STUDY THE CURRENT REIMBURSEMENT SYSTEM FOR DOMICILIARY HOMES AND RECOMMEND CHANGES.

Whereas, G.S. 131D-3 establishes cost and revenue reporting requirements for domiciliary homes; and

Whereas, the North Carolina General Assembly directly sets the rates for domiciliary homes; and

Whereas, the rates for these homes may not bear any real relationship to the cost data; and

Whereas, there may be a better method for rate setting than this one being currently used; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources shall study the issue of reimbursement for domiciliary homes and shall recommend a specific method for rate setting.

This study shall consider:

(1) What the structure of the rates should be;
(2) How the levels of payment should be determined; and
(3) How the system of rate setting will be administered.

The Department shall report the results of this study, including any legislative recommendations, to the Joint Legislative Commission on Governmental Operations and to the Fiscal Research Division by January 1, 1992.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of April, 1991.

H.B. 264 **CHAPTER 33**

AN ACT TO PROVIDE FOR THE ELECTION OF THE ANSON COUNTY BOARD OF EDUCATION FROM SEVEN SINGLE-MEMBER DISTRICTS, WITH TWO AT LARGE.

The General Assembly of North Carolina enacts:

Section 1. For the purpose of nominating and electing members of the county board of education, Anson County is divided into seven districts, each of which shall nominate and elect one member. The districts shall be the same as those for election of the Anson County Board of Commissioners as provided by Section 2 of Chapter 281, Session Laws of 1987. In addition, two members shall be nominated and elected at large.

Sec. 2. The qualified voters of each district established by this act shall nominate candidates and elect a member who resides in that district for the seat apportioned to that district. The qualified voters of Anson County shall nominate candidates and elect members who reside in Anson County for the seats apportioned to the county at large.

Sec. 3. (a) In 1991 members shall be elected from Districts 1, 3, and 5 for three-year terms, and two members shall be elected at large for three-year terms.

(b) In 1992 and quadrennially thereafter, members shall be elected from Districts 2, 4, 6, and 7 for four-year terms.

(c) In 1994 and quadrennially thereafter, members shall be elected from Districts 1, 3, and 5 for four-year terms, and two members shall be elected at large for four-year terms.

Sec. 4. (a) For the purpose of determining the manner of filling vacancies on the Anson County Board of Education:

(1) Charles Riddle, whose term expires on the first Monday in December of 1990, shall be a member at large;

(2) Lee Roy Lookabill, Jr., whose term expires on the first Monday in December of 1990, shall be a member at large;
(3) Richard Johnson, whose term expires on the first Monday in December of 1990, shall represent District 1;
(4) Richard Allen, whose term expires on the first Monday in December of 1992, shall represent District 4;
(5) Clayton Bennett, Jr., whose term expires on the first Monday in December of 1990, shall represent District 3;
(6) Linda Jones, whose term expires on the first Monday in December of 1992, shall represent District 2;
(7) John Capell, whose term expires on the first Monday in December of 1990, shall represent District 5;
(8) Nat White, Jr., whose term expires on the first Monday in December of 1992, shall represent District 6; and
(9) Melvin Bell, whose term expires on the first Monday in December of 1992, shall represent District 7;

(b) When a vacancy occurs on any district seat, the person appointed to fill the vacancy must be a resident of that district.

Sec. 5. The results of primary elections for at-large seats on the Anson County Board of Education shall be determined as provided by G.S. 163-111 for the group method of election.

Sec. 6. The provisions of Chapter 261, Session Laws of 1967, as amended, which were in effect at the time of ratification of this act, and which do not conflict with this act, are not affected by this act.

Sec. 7. The election dates, general timetable, and filing period for the 1991 election authorized by this act shall be established by the Executive Secretary-Director of the State Board of Elections.

Sec. 8. This act is effective upon ratification. Upon its ratification, Chapter 288 of the 1989 Session Laws is repealed.

In the General Assembly read three times and ratified this the 8th day of April, 1991.

S.B. 128 **CHAPTER 34**

AN ACT TO PROVIDE FOR THE SYSTEMATIC REVIEW OF PROPERTY EXEMPTED OR EXCLUDED FROM PROPERTY TAXATION AND TO ALLOW PROPERTY THAT WAS ERRONEOUSLY EXEMPTED OR EXCLUDED TO BE TREATED AS DISCOVERED PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-282.1(a) reads as rewritten:

"(a) Every owner of property claiming exemption or exclusion from property taxes under the provisions of this Subchapter has the burden

of establishing that the property is entitled thereto. Except as provided below, an owner claiming exemption or exclusion shall annually file an application for exemption or exclusion during the listing period. If the property for which the exemption or exclusion is claimed is appraised by the Department of Revenue, the application shall be filed with the Department. Otherwise, the application shall be filed with the assessor of the county in which the property is situated. An application must contain a complete and accurate statement of the facts that entitle the property to the exemption or exclusion and must indicate the municipality, if any, in which the property is located. ~~If the property covered by the application is located within a municipality, that fact shall be shown on the application.~~ Each application filed with the Department of Revenue or an assessor shall be submitted on a form approved by the Department. Application forms shall be made available by the assessor and the Department, as appropriate.

(1) The United States government, the State of North Carolina and the counties and municipalities of the State are exempted from the requirement that owners file applications for exemption.

(2) Owners of the special classes of property excluded from taxation under G.S. 105-275(5), (15), (16), (26), (31), (33), or (34), or exempted under G.S. 105-278.2 are not required to file applications for the exclusion or exemption of that property.

(3) After an owner of property entitled to exemption under G.S. ~~105-277.1,~~ 105-278.3, 105-278.4, 105-278.5, 105-278.6, 105-278.7, or 105-278.8 or exclusion under G.S. 105-275(3), (7), ~~(12) or (39)~~ (12), or (39), G.S. 105-277.1, or G.S. 105-278 has applied for exemption or exclusion and the exemption or exclusion has been approved, ~~such~~ the owner ~~shall not be~~ is not required to file ~~applications~~ an application in subsequent years except in the following circumstances:

a. New or additional property is acquired or improvements are added or removed, necessitating a change in the valuation of the ~~property,~~ property; or

b. There is a change in the use of the property or the qualifications or eligibility of the taxpayer necessitating a review of the ~~exemption.~~ exemption or exclusion.

(4) After an owner of property entitled to exclusion under G.S. 105-277.10 has applied for the exclusion and the exclusion has been approved, the owner is not required to apply for the exclusion in subsequent years so long as the classified

property, including classified property acquired after the application is approved, is used or held for use directly in manufacturing or processing as part of industrial machinery.

(5) Upon a showing of good cause by the applicant for failure to make a timely application, an application for exemption or exclusion filed after the close of the listing period may be approved by the Department of Revenue, the board of equalization and review, the board of county commissioners, or the governing body of a municipality, as appropriate. An untimely application for exemption or exclusion approved under this subdivision applies only to property taxes levied by the county or municipality in the calendar year in which the untimely application is filed."

Sec. 2. G.S. 105-296 is amended by adding a new subsection to read:

"(l) The assessor shall annually review at least one-eighth of the parcels in the county exempted or excluded from taxation to verify that these parcels qualify for the exemption or exclusion. By this method, the assessor shall review the eligibility of all parcels exempted or excluded from taxation in an eight-year period. The assessor may require the owner of exempt or excluded property to make available for inspection any information reasonably needed by the assessor to verify that the property continues to qualify for the exemption or exclusion."

Sec. 3. G.S. 105-273 reads as rewritten:

"*§ 105-273. Definitions.*

When used in this Subchapter (unless the context requires a different meaning):

(1) 'Abstract' means the document on which the property of a taxpayer is listed for ad valorem taxation and on which the appraised and assessed values of the property are recorded.

(2) 'Appraisal' means both the true value of property and the process by which true value is ascertained.

(3) 'Assessment' means both the tax value of property and the process by which the assessment is determined.

(4) Repealed by Session Laws 1973, c. 695, s. 15, effective January 1, 1974.

(5) 'Collector' or 'tax collector' means any person charged with the duty of collecting taxes for a county or municipality.

(6) 'Corporation' includes nonprofit corporation and every type of organization having capital stock represented by shares.

(6a) 'Discovered property' includes all of the following:

a. Property that was not listed during a listing period.

b. Property that was listed but the listing included a substantial understatement.

c. Property that has been granted an exemption or exclusion and does not qualify for the exemption or exclusion.

(6b) 'To discover property' means to determine any of the following:

a. Property has not been listed during a listing period.

b. A taxpayer made a substantial understatement of listed property.

c. Property was granted an exemption or exclusion and the property does not qualify for an exemption or exclusion.

(7) 'Document' includes book, paper, record, statement, account, map, plat, film, picture, tape, object, instrument, and any other thing conveying information.

(7a) 'Failure to list property' includes all of the following:

a. Failure to list property during a listing period.

b. A substantial understatement of listed property.

c. Failure to notify the assessor that property granted an exemption or exclusion under an application for exemption or exclusion does not qualify for the exemption or exclusion.

(8) 'Intangible personal property' means patents, copyrights, secret processes, formulae, good will, trademarks, trade brands, franchises, stocks, bonds, cash, bank deposits, notes, evidences of debt, leasehold interests in exempted real property, bills and accounts receivable, and other like property.

(8a) 'Inventories' means goods held for sale in the regular course of business by manufacturers and retail and wholesale merchants. As to manufacturers, the term includes raw materials, goods in process, and finished goods, as well as other materials or supplies that are consumed in manufacturing or processing, or that accompany and become a part of the sale of the property being sold. The term also includes crops, livestock, poultry, feed used in the production of livestock and poultry, and other agricultural or horticultural products held for sale, whether in process or ready for sale. The term does not include fuel used in manufacturing or processing, nor does it include materials or supplies not

used directly in manufacturing or processing. As to retail and wholesale merchants, the term includes, in addition to articles held for sale, packaging materials that accompany and become a part of the sale of the property being sold.

(9) 'List' or 'listing,' when used as a noun, means abstract.

(10) Repealed by Session Laws 1987, c. 43, s. 1, effective April 2, 1987.

(10a) 'Local tax official' includes a county assessor, an assistant county assessor, a member of a county board of commissioners, a member of a county board of equalization and review, a county tax collector, and the municipal equivalents of these officials.

(10b) 'Manufacturer' means a taxpayer who is regularly engaged in the mechanical or chemical conversion or transformation of materials or substances into new products for sale or in the growth, breeding, raising, or other production of new products for sale. The term does not include delicatessens, cafes, cafeterias, restaurants, and other similar retailers that are principally engaged in the retail sale of foods prepared by them for consumption on or off their premises.

(11) 'Municipal corporation' and 'municipality' mean city, town, incorporated village, sanitary district, rural fire protection district, rural recreation district, mosquito control district, hospital district, metropolitan sewerage district, watershed improvement district, or other district or unit of local government by or for which ad valorem taxes are levied.

(12) 'Person' and 'he' include any individual, trustee, executor, administrator, other fiduciary, corporation, unincorporated association, partnership, sole proprietorship, company, firm, or other legal entity.

(13) 'Real property,' 'real estate,' and 'land' mean not only the land itself, but also buildings, structures, improvements, and permanent fixtures thereon, and all rights and privileges belonging or in any wise appertaining thereto. These terms also means a manufactured home as defined in G.S. 143-143.9(6) if it is a multi-section residential structure (consisting of two or more sections); has the moving hitch, wheels, and axles removed; and is placed upon a permanent enclosed foundation on land owned by the owner of the manufactured home.

(13a) 'Retail Merchant' means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to users or consumers.

(13b) 'Substantial understatement' means the omission of a material portion of the value, quantity, or other measurement of taxable property. The determination of materiality in each case shall be made by the assessor, subject to the taxpayer's right to review of the determination by the county board of equalization and review or board of commissioners and appeal to the Property Tax Commission.

(14) 'Tangible personal property' means all personal property that is not intangible and that is not permanently affixed to real property.

(15) 'Tax' and 'taxes' include the principal amount of any tax, costs, penalties, and interest imposed upon property tax or dog license tax.

(16) 'Taxing unit' means a county or municipality authorized to levy ad valorem property taxes.

(17) 'Taxpayer' means any person whose property is subject to ad valorem property taxation by any county or municipality and any person who, under the terms of this Subchapter, has a duty to list property for taxation.

(18) 'Valuation' means appraisal and assessment.

(19) 'Wholesale Merchant' means a taxpayer who is regularly engaged in the sale of tangible personal property, acquired by a means other than manufacture, processing, or producing by the merchant, to other retail or wholesale merchants for resale or to manufacturers for use as ingredient or component parts of articles being manufactured for sale."

Sec. 4. G.S. 105-312(a) is repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of April, 1991.

S.B. 157 **CHAPTER 35**

AN ACT TO MAKE CHANGES TO THE LAWS GOVERNING ADMINISTRATIVE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-23 reads as rewritten:

"§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(a) A contested case shall be commenced by filing a petition with the Office of Administrative Hearings and, except as provided in Article 3A of this Chapter, shall be conducted by that Office. The party who files the petition shall ~~also~~ serve a copy of the petition on all other parties ~~and~~ and, if the dispute concerns a license, the person who holds the license. A party who files a petition shall file a certificate of service together with the petition. ~~Any~~ A petition shall be signed by a party or a representative of the party and, if filed by a party other than an ~~agency shall be verified or supported by affidavit and~~ agency, shall state facts tending to establish that the agency named as the respondent has deprived the petitioner of property, has ordered the petitioner to pay a fine or civil penalty, or has otherwise substantially prejudiced the petitioner's rights and that the agency:

(1) Exceeded its authority or jurisdiction;

(2) Acted erroneously;

(3) Failed to use proper procedure;

(4) Acted arbitrarily or capriciously; or

(5) Failed to act as required by law or rule.

The parties in a contested case shall be given an opportunity for a hearing without undue delay. Any person aggrieved may commence a contested case hereunder.

A local government employee, applicant for employment, or former employee to whom Chapter 126 of the General Statutes applies may commence a contested case under this Article in the same manner as any other petitioner. The case shall be conducted in the Office of Administrative Hearings in the same manner as other contested cases under this Article, except that the decision of the State Personnel Commission shall be advisory only and not binding on the local appointing authority, unless (1) the employee, applicant, or former employee has been subjected to discrimination prohibited by Article 6 of Chapter 126 of the General Statutes or (2) applicable federal standards require a binding decision. In these two cases, the State Personnel Commission's decision shall be binding.

(a1) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9), effective July 15, 1986.

(a2) An administrative law judge assigned to a contested case may require a party to the case to file a prehearing statement. A party's prehearing statement must be served on all other parties to the contested case.

(b) The parties to a contested case shall be given a notice of hearing not less than 15 days before the hearing by the Office of

Administrative ~~Hearings, which~~ Hearings. If prehearing statements have been filed in the case, the notice shall ~~include:~~

~~(1) A statement of~~ state the date, hour, ~~place, and nature of the hearing;~~

~~(2) A reference to~~ and place of the hearing. If prehearing statements have not been filed in the case, the notice shall state the date, hour, place, and nature of the hearing, shall list the particular sections of the statutes and rules ~~involved; and~~

~~(3) A~~ involved, and shall give a short and plain statement of the factual allegations.

(4) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 1022, s. 1(9), effective July 15, 1986.

(c) Notice shall be given personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt. If giving of notice cannot be accomplished either personally or by certified mail, notice shall then be given in the manner provided in G.S. 1A-1, Rule 4(j1).

(d) Any person may petition to become a party by filing a motion to intervene in the manner provided in G.S. 1A-1, Rule 24. In addition, any person interested in a contested case may intervene and participate in that proceeding to the extent deemed appropriate by the administrative law judge.

(e) All hearings under this Chapter shall be open to the public. Hearings shall be conducted in an impartial manner. Hearings shall be conducted according to the procedures set out in this Article, except to the extent and in the particulars that specific hearing procedures and time standards are governed by another statute.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, the general limitation for the filing of a petition in a contested case is 60 days. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing."

Sec. 2. G.S. 150B-25(b) is repealed.

Sec. 3. G.S. 150B-27 reads as rewritten:

"§ *150B-27. Subpoena.*

After the commencement of a contested case, ~~the administrative law judge may issue subpoenas upon his own motion or upon a written request. When a written request for a subpoena has been made, the administrative law judge shall issue the requested subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control.~~ subpoenas may be issued and served in accordance with G.S. 1A-1, Rule 45. In addition to the methods of service in G.S. 1A-1, Rule 45, a State law enforcement officer may serve a subpoena on behalf of an agency that is a party to the contested case by any method by which a sheriff may serve a subpoena under that Rule. Upon ~~written request,~~ a motion, the administrative law judge ~~shall revoke~~ may quash a subpoena if, upon a hearing, ~~he~~ the administrative law judge finds that the evidence the production of which is required does not relate to a matter in issue, ~~or~~ ~~if~~ the subpoena does not describe with sufficient particularity the evidence the production of which is required, or ~~if~~ for any other reason sufficient in law the subpoena ~~is invalid.~~ may be quashed.

Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6."

Sec. 4. G.S. 150B-29(a) reads as rewritten:

"(a) In all contested cases, irrelevant, immaterial and unduly repetitious evidence shall be excluded. Except as otherwise provided, the rules of evidence as applied in the trial division of the General Court of Justice shall be followed; but, when evidence is not reasonably available under the rules to show relevant facts, then the most reliable and substantial evidence available shall be admitted. On the judge's own motion, an administrative law judge may exclude evidence that is inadmissible under this section. It shall not be necessary for a party or his attorney to object at the hearing to evidence in order to preserve the right to object to its consideration by the administrative law judge in making a recommended decision, by the agency in making a final decision, or by the court on judicial review."

Sec. 5. G.S. 150B-33(b) reads as rewritten:

"(b) An administrative law judge may:

(1) Administer oaths and affirmations;

(2) ~~Sign and issue subpoenas in the name of the Office of Administrative Hearings, requiring attendance and giving of testimony by witnesses and the production of books, papers, and other documentary evidence;~~ Sign, issue, and rule on subpoenas in accordance with G.S. 150B-27 and G.S. 1A-1, Rule 45;

(3) Provide for the taking of testimony by ~~deposition;~~ deposition and rule on all objections to discovery in accordance with G.S. 1A-1, the Rules of Civil Procedure;

(3a) Rule on all prehearing motions that are authorized by G.S. 1A-1, the Rules of Civil Procedure;

(4) Regulate the course of the hearings, including discovery, set the time and place for continued hearings, and fix the time for filing of briefs and other documents;

(5) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties;

(6) Stay the contested action by the agency pending the outcome of the case, upon such terms as he deems proper, and subject to the provisions of G.S. 1A-1, Rule 65;

(7) Determine whether the hearing shall be recorded by a stenographer or by an electronic device; and

(8) Enter an order returnable in the General Court of Justice, Superior Court Division, to show cause why the person should not be held in contempt. The Court shall have the power to impose punishment as for contempt for any act which would constitute direct or indirect contempt if the act occurred in an action pending in Superior Court.

(9) Determine that a rule as applied in a particular case is void because (1) it is not within the statutory authority of the agency, (2) is not clear and unambiguous to persons it is intended to direct, guide, or assist, or (3) is not reasonably necessary to enable the agency to ~~perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.~~ fulfill a duty delegated to it by the General Assembly.

(10) Impose the sanctions provided for in G.S. 1A-1 or Chapter 3 of Title 26 of the North Carolina Administrative Code for noncompliance with applicable procedural rules."

Sec. 6. G.S. 150B-34(b) is repealed.

Sec. 7. G.S. 150B-36 reads as rewritten:

"§ *150B-36. Final decision.*

(a) Before the agency makes a final decision, it shall give each party an opportunity to file exceptions to the decision recommended by the

administrative law judge, and to present written arguments to those in the agency who will make the final decision or order. If a party files in good faith a timely and sufficient affidavit of personal bias or other reason for disqualification of a member of the agency making the final decision, the agency shall determine the matter as a part of the record in the case, and the determination is subject to judicial review at the conclusion of the case.

(b) A final decision or order in a contested case shall be made by the agency in writing after review of the official record as defined in G.S. 150B-37(a) and shall include findings of fact and conclusions of law. If the agency does not adopt the administrative law judge's recommended decision as its final decision, the agency shall state in its decision or order the specific reasons why it did not adopt the administrative law judge's recommended decision. The agency may consider only the official record prepared pursuant to G.S. 150B-37 in making a final decision or order, and the final decision or order shall be supported by substantial evidence admissible under G.S. 150B-29(a), 150B-30, or 150B-31. A copy of the decision or order shall be served upon each party personally or by certified mail addressed to the party at the latest address given by the party to the agency, and a copy shall be furnished to his attorney of record and the Office of Administrative Hearings.

(c) The following decisions made by administrative law judges in contested cases are final decisions:

(1) A determination ~~by an administrative law judge in a contested case~~ that the Office of Administrative Hearings lacks ~~jurisdiction, or an~~ jurisdiction.

(2) An order entered pursuant to the authority in G.S. ~~7A-759(e) shall constitute a final decision.~~ 7A-759(e).

(3) An order entered pursuant to a written prehearing motion that either dismisses the contested case for failure of the petitioner to prosecute or grants the relief requested when a party does not comply with procedural requirements.

(4) An order entered pursuant to a prehearing motion to dismiss the contested case in accordance with G.S. 1A-1, Rule 12(b) when the order disposes of all issues in the contested case."

Sec. 8. G.S. 150B-39(c) reads as rewritten:

"(c) ~~An agency may issue subpoenas in~~ In preparation for, or in the conduct of, a contested case ~~upon its own motion. If a written request is made by a party in a contested case, an agency shall issue subpoenas forthwith requiring the attendance and testimony of witnesses and the production of evidence including books, records, correspondence, and documents in their possession or under their control.~~ subpoenas may be issued and served in accordance with G.S.

1A-1, Rule 45. Upon ~~written request,~~ a motion, the agency ~~shall revoke~~ may quash a subpoena if, upon a hearing, the agency finds that the evidence, the production of which is required, does not relate to a matter in issue, ~~or if~~ the subpoena does not describe with sufficient particularity the evidence the production of which is required, or ~~if~~ for any other reason sufficient in law the subpoena ~~is invalid.~~ may be quashed. Witness fees shall be paid by the party requesting the subpoena to subpoenaed witnesses in accordance with G.S. 7A-314. However, State officials or employees who are subpoenaed shall not be entitled to any witness fees, but they shall receive their normal salary and they shall not be required to take any annual leave for the witness days. Travel expenses of State officials or employees who are subpoenaed shall be reimbursed as provided in G.S. 138-6."

Sec. 9. G.S. 150B-44 reads as rewritten:

"*§ 150B-44. Right to judicial intervention when decision unreasonably delayed.*

Unreasonable delay on the part of any agency or administrative law judge in taking any required action shall be justification for any person whose rights, duties, or privileges are adversely affected by such delay to seek a court order compelling action by the agency or administrative law judge. ~~Except for an agency that is a board or commission, an agency's failure to make a final decision within 60 days of the date on which all exceptions or arguments are filed under G.S. 150B-36(a) with the agency constitutes an unreasonable delay. A board or commission's failure to make a final decision within the later of the 60 days allowed other agencies or 60 days after the board's or commission's next regularly scheduled meeting constitutes an unreasonable delay.~~ An agency that is subject to Article 3 of this Chapter and is not a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. An agency that is subject to Article 3 of this Chapter and is a board or commission has 90 days from the day it receives the official record in a contested case from the Office of Administrative Hearings or 90 days after its next regularly scheduled meeting, whichever is longer, to make a final decision in the case. This time limit may be extended by the parties or, for good cause shown, by the agency for an additional period of up to 90 days. If an agency subject to Article 3 of this Chapter has not made a final decision within these time limits, the agency is considered to have adopted the administrative law judge's recommended decision as the agency's final decision. Failure of an agency subject to Article 3A of this Chapter to make a final decision

within 180 days of the close of the contested case hearing is justification for a person whose rights, duties, or privileges are adversely affected by the delay to seek a court order compelling action by the agency or, if the case was heard by an administrative law judge, by the administrative law judge."

Sec. 10. G.S. 150B-46 reads as rewritten:

"§ *150B-46. Contents of petition; copies served on all parties; intervention.*

The petition shall explicitly state what exceptions are taken to the decision or procedure and what relief the petitioner seeks. Within 10 days after the petition is filed with the court, the party seeking the review shall serve copies of the petition by personal service or by certified mail upon all who were parties of record to the administrative proceedings. Names and addresses of such parties shall be furnished to the petitioner by the agency upon request. Any party to the administrative proceeding ~~may become~~ is a party to the review proceedings ~~by notifying the court within 10 days after receipt of the copy of the petition.~~ unless the party withdraws by notifying the court of the withdrawal and serving the other parties with notice of the withdrawal. Other parties to the proceeding may file a response to the petition within 30 days of service. Parties, including agencies, may state exceptions to the decision or procedure and what relief is sought in the response.

Any person aggrieved may petition to become a party by filing a motion to intervene as provided in G.S. 1A-1, Rule 24."

Sec. 11. This act is effective October 1, 1991, and applies to contested cases commenced on or after that date.

In the General Assembly read three times and ratified this the 15th day of April, 1991.

S.B. 177 **CHAPTER 36**

AN ACT TO AMEND ARTICLE 10 OF CHAPTER 65 TO ALLOW ACCESS TO AND MAINTENANCE OF PRIVATE GRAVES AND ABANDONED PUBLIC CEMETERIES.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 65 reads as rewritten:

"ARTICLE 10.

"Access to and Maintenance of Private ~~Graves.~~ Graves and Abandoned Public Cemeteries.

"§ *65-74. Entering public or private property to maintain or visit a private grave or an abandoned public cemetery with consent.*

Any of the following ~~persons may,~~ persons, with the consent of the public or private landowner, may enter the property of another to discover, restore, maintain, or visit a private ~~grave:~~ grave or abandoned public cemetery:

(1) A descendant of the person whose remains are reasonably believed to be interred in the grave;

(2) A descendant's designee; or

(3) Any other person who ~~was personally acquainted with or~~ has a special personal interest in the ~~deceased.~~ grave or abandoned public cemetery.

"*§ 65-75. Entering public or private property to maintain or visit a private grave or an abandoned public cemetery without consent.*

(a) If the consent of the landowner cannot be obtained, any person listed in G.S. 65-74(1), (2), or (3) may commence a special proceeding by petitioning the clerk of superior court of the county in which he has reasonable grounds to believe the deceased is buried, or in the case of an abandoned public cemetery, in the county in which the abandoned public cemetery is located for an order allowing him to enter the property to discover, restore, maintain, or visit the ~~grave.~~ grave or abandoned public cemetery. The petition shall be verified. This special proceeding shall be in accordance with the provisions of Article 33 of Chapter 1 of the General Statutes. The clerk shall issue an order allowing the petitioner to enter the property if he finds that:

(1) There are reasonable grounds to believe that the grave or abandoned public cemetery is located on the property or that it is reasonably necessary to enter or cross the landowner's property to reach the ~~grave.~~ grave or abandoned public cemetery;

(2) The petitioner, or his designee, is a descendant of the deceased, or that the petitioner ~~was personally acquainted with or had~~ has a special interest in the ~~deceased;~~ grave or abandoned public cemetery; and

(3) The entry on the property would not unreasonably interfere with the enjoyment of the property by the landowner.

(b) The clerk's order may:

(1) Specify the dates and the daylight hours that the petitioner may enter and remain on the property;

(2) Grant to the petitioner the right to enter the landowner's property ~~once a month~~ periodically, as specified in the order, after the time needed for initial restoration of the ~~grave;~~ grave or abandoned public cemetery; or

(3) Specify a reasonable route from which the petitioner may not deviate in all entries and exits from the property."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 15th day of April, 1991.

S.B. 43 **CHAPTER 37**

AN ACT TO PROVIDE FOR AUTOMATIC CIVIL COMMITMENT OF A DEFENDANT CHARGED WITH A CRIME AND FOUND NOT GUILTY BY REASON OF INSANITY, TO SHIFT THE BURDEN OF PROOF TO THE DEFENDANT AT SUBSEQUENT HEARINGS ON RELEASE, AND TO MAKE OTHER CHANGES IN RELATED PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1321 reads as rewritten:

"*§ 15A-1321. ~~Civil~~ Automatic civil commitment of defendants found not guilty by reason of insanity.*

When a defendant charged with a crime is found not guilty by reason of insanity by ~~jury~~ verdict or upon motion pursuant to G.S. 15A-959(c), the presiding judge shall enter an order finding that the defendant has been found not guilty by reason of insanity of a crime and committing the defendant to a State 24-hour facility designated pursuant to G.S. 122C-252. The court order shall also grant custody of the defendant to a law enforcement officer who shall take the defendant directly to that facility. ~~upon such additional hearing, if any, as he determines to be necessary, shall determine whether there are reasonable grounds to believe the defendant meets the criteria for involuntary commitment under Part 7 of Article 5 of Chapter 122C of the General Statutes. If the presiding judge finds reasonable grounds to believe that the defendant meets the criteria, he shall make findings of fact and issue a custody order in the same manner, upon the same grounds, and with the same effect, as an order issued by a clerk or magistrate pursuant to G.S. 122C-261.~~ Proceedings thereafter are in accordance with Part 7 of Article 5 of Chapter 122C of the General Statutes. ~~However, if the defendant was charged with a violent crime, including a crime involving assault with a deadly weapon, the judge's custody order shall require a law-enforcement officer to take the defendant directly to a 24-hour facility as described in G.S. 122C-252; and the order must indicate that the defendant was charged with a violent crime and that he was found not guilty by reason of insanity.~~"

Sec. 2. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"*§ 122C-268.1. Inpatient commitment; hearing following automatic commitment.*

(a) A respondent who is committed pursuant to G.S. 15A-1321 shall be provided a hearing, unless waived, before the expiration of 50 days from the date of his commitment.

(b) The district attorney in the county in which the respondent was found not guilty by reason of insanity may represent the State's interest at the hearing. If the district attorney declines to represent the State's interest, then the representation shall be determined as follows. An attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, may represent the State's interest at commitment hearings, rehearings, and supplemental hearings. Alternatively, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing.

(c) The clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d1).

(d) The respondent shall be represented by counsel of his choice, or if he is indigent within the meaning of G.S. 7A-450 or refuses to retain counsel if financially able to do so, he shall be represented by counsel appointed by the court.

(e) With the consent of the court, counsel may in writing waive the presence of the respondent.

(f) Certified copies of reports and findings of physicians and psychologists and previous and current medical records are admissible in evidence, but the respondent's right to confront and cross-examine witnesses may not be denied.

(g) The hearing shall take place in the trial division in which the original trial was held. The hearing shall be open to the public. For purposes of this subsection, 'trial division' means either the superior court division or the district court division of the General Court of Justice.

(h) A copy of all documents admitted into evidence and a transcript of the proceedings shall be furnished to the respondent on request by the clerk upon the direction of the presiding judge. If the respondent is indigent, the copies shall be provided at State expense.

(i) The respondent shall bear the burden to prove by a preponderance of the evidence that he is no longer dangerous to others. If the court is so satisfied, then the respondent shall bear the burden to prove by a preponderance of the evidence (i) that he does not have a mental illness, or (ii) that confinement is not necessary to ensure his own survival or safety and that confinement is not necessary to alleviate or cure his illness. If the court is so satisfied, then the court shall order the respondent discharged and released. If

the court finds that the respondent has not met his burdens of proof, then the court shall order that inpatient commitment continue at a 24-hour facility designated pursuant to G.S. 122C-252 for a period not to exceed 90 days.

(j) Nothing in this section shall limit the respondent's right to *habeas corpus* relief."

Sec. 3. Part 7 of Article 5 of Chapter 122C of the General Statutes is amended by adding a new section to read:

"*§ 122C-276.1. Inpatient commitment; rehearings for respondents who are insanity acquittees.*

(a) At least 15 days before the end of any inpatient commitment period ordered pursuant to G.S. 122C-268.1, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1), unless the hearing is waived by the respondent.

(b) The proceedings of the rehearing shall be governed by the same procedures provided by G.S. 122C-268.1.

(c) The respondent shall bear the burden to prove by a preponderance of the evidence that he is no longer dangerous to others. If the court is so satisfied, then the respondent shall bear the burden to prove by a preponderance of the evidence (i) that he does not have a mental illness, or (ii) that confinement is not necessary to ensure his own survival or safety and that confinement is not necessary to alleviate or cure his illness. If the court is so satisfied, then the court shall order the respondent discharged and released. If the court finds that the respondent has not met his burdens of proof, then the court shall order inpatient commitment be continued for a period not to exceed 180 days.

(d) At least 15 days before the end of any commitment period ordered pursuant to subsection (c) of this section and annually thereafter, the clerk shall calendar the hearing and notify the parties as specified in G.S. 122C-264(d1). The procedures and standards for the rehearing are the same as under this section. No third or subsequent inpatient recommitment order shall be for a period longer than one year."

Sec. 4. G.S. 122C-264 reads as rewritten:

"*§ 122C-264. Duties of clerk of superior court and the district attorney.*

(a) Upon receipt of a physician's or eligible psychologist's finding that the respondent meets the criteria of G.S. 122C-263(d)(1) and that outpatient commitment is recommended, the clerk of superior court of the county where the petition was initiated, upon direction of a district court judge, shall calendar the matter for hearing and shall notify the respondent, the proposed outpatient treatment physician or center, and the petitioner of the time and place of the hearing. The petitioner may

file a written waiver of his right to notice under this subsection with the clerk of court.

(b) Upon receipt of a physician's or eligible psychologist's finding that a respondent meets the criteria of G.S. 122C-263(d)(2) and that inpatient commitment is recommended, the clerk of superior court of the county where the 24-hour facility is located shall, after determination required by G.S. 122C-261(c) and upon direction of a district court judge, assign counsel if necessary, calendar the matter for hearing, and notify the respondent, his counsel, and the petitioner of the time and place of the hearing. The petitioner may file a written waiver of his right to notice under this subsection with the clerk of court.

(b1) Upon receipt of a physician's or eligible psychologist's certificate that a respondent meets the criteria of G.S. 122C-261(a) and that immediate hospitalization is needed, the clerk of superior court of the county where the 24-hour facility is located shall submit the certificate to the Chief District Court Judge. The court shall review the certificate within 24 hours (excluding Saturday, Sunday and holidays) for a finding of reasonable grounds in accordance with 122C-261(b). The clerk shall notify the 24-hour facility of the court's findings by telephone and shall proceed as set forth in (b), (c) and (f) of this section.

(c) Notice to the respondent, required by subsections (a) and (b) of this section, shall be given as provided in G.S. 1A-1, Rule 4(j) at least 72 hours before the hearing. Notice to other individuals shall be sent at least 72 hours before the hearing by first-class mail postage prepaid to the individual's last known address. G.S. 1A-1, Rule 6 shall not apply.

(d) In cases described in G.S. 122C-266(b) in addition to notice required in subsections (a) and (b) of this section, the clerk of superior court shall notify the chief district judge and the district attorney in the county in which the defendant was found ~~not guilty by reason of insanity or~~ incapable of proceeding. The notice shall be given in the same way as the notice required by subsection (c) of this section. The judge or the district attorney may file a written waiver of his right to notice under this subsection with the clerk of court.

(d1) For hearings and rehearings pursuant to G.S. 122C-268.1 and G.S. 122C-276.1, the clerk of superior court shall calendar the hearing or rehearing and shall notify the respondent, his counsel, counsel for the State, and the district attorney involved in the original trial. The notice shall be given in the same manner as the notice required by subsection (c) of this section. Upon receipt of the notice, the district attorney shall notify any persons he deems appropriate, including anyone who has filed with his office a written request for

notification of any hearing or rehearing concerning discharge or conditional release of a respondent. Notice sent by the district attorney shall be by first-class mail to the person's last known address.

(e) The clerk of superior court of the county where outpatient commitment is to be supervised shall keep a separate list regarding outpatient commitment and shall prepare quarterly reports listing all active cases, the assigned supervisor, and the disposition of all hearings, supplemental hearings, and rehearings.

(f) The clerk of superior court of the county where inpatient commitment hearings and rehearings are held shall provide all notices, send all records and maintain a record of all proceedings as required by this Part; provided that if the respondent has been committed to a 24-hour facility in a county other than his county of residence and the district court hearing is held in the county of the facility, the clerk of superior court in the county of the facility shall forward the record of the proceedings to the clerk of superior court in the county of respondent's residence, where they shall be maintained by receiving clerk."

Sec. 5. G.S. 122C-276 reads as rewritten:

"*§ 122C-276. Inpatient commitment; rehearings for respondents other than insanity acquittees.*

(a) Fifteen days before the end of the initial inpatient commitment period if the attending physician determines that commitment of a respondent beyond the initial period will be necessary, he shall so notify the clerk of superior court of the county in which the facility is located. The clerk, at least 10 days before the end of the initial period, on order of a district court judge of the district court district as defined in G.S. 7A-133 in which the facility is located, shall calendar the rehearing. If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the clerk shall also notify the chief district court judge, the clerk of superior court, and the district attorney in the county in which the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding of the time and place of the hearing.

(b) Fifteen days before the end of the initial treatment period of a respondent who was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, having been found ~~not guilty by reason of insanity or~~ incapable of proceeding, if the attending physician determines that commitment of the respondent beyond the initial period will not be necessary, he shall so notify the clerk of

superior court who shall schedule a rehearing as provided in subsection (a) of this section.

(c) Subject to the provisions of G.S. 122C-269(c), rehearings shall be held at the facility in which the respondent is receiving treatment. The judge is a judge of the district court of the district court district as defined in G.S. 7A-133 in which the facility is located or a district court judge temporarily assigned to that district.

(d) Notice and proceedings of rehearings are governed by the same procedures as initial hearings and the respondent has the same rights he had at the initial hearing including the right to appeal.

(e) At rehearings the court may make the same dispositions authorized in G.S. 122C-271(b) except a second commitment order may be for an additional period not in excess of 180 days.

(f) Fifteen days before the end of the second commitment period and annually thereafter, the attending physician shall review and evaluate the condition of each respondent; and if he determines that a respondent is in continued need of inpatient commitment or, in the alternative, in need of outpatient commitment, or a combination of both, he shall so notify the respondent, his counsel, and the clerk of superior court of the county, in which the facility is located. Unless the respondent through his counsel files with the clerk a written waiver of his right to a rehearing, the clerk, on order of a district court judge of the district in which the facility is located, shall calendar a rehearing for not later than the end of the current commitment period. The procedures and standards for the rehearing are the same as for the first rehearing. No third or subsequent inpatient recommitment order shall be for a period longer than one year.

(g) At any rehearings the court has the option to order outpatient commitment for a period not in excess of 180 days in accordance with the criteria specified in G.S. 122C-263(d)(1) and following the procedures as specified in this Article."

Sec. 6. G.S. 122C-277 reads as rewritten:

"*§ 122C-277. Release and conditional release; judicial review.*

(a) Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the attending physician shall discharge a committed respondent unconditionally at any time he determines that the respondent is no longer in need of inpatient commitment. However, if the attending physician determines that the respondent meets the criteria for outpatient commitment as defined in G.S. 122C-263(d)(1), he may request the clerk to calendar a supplemental hearing to determine whether an outpatient commitment order shall be issued. Except as provided in ~~subsection~~ subsections (b) and (b1) of this section, the attending physician may also release a respondent

conditionally for periods not in excess of 30 days on specified medically appropriate conditions. Violation of the conditions is grounds for return of the respondent to the releasing facility. A law-enforcement officer, on request of the attending physician, shall take a conditional releasee into custody and return him to the facility in accordance with G.S. 122C-205. Notice of discharge and of conditional release shall be furnished to the clerk of superior court of the county of commitment and of the county in which the facility is located.

(b) If the respondent was initially committed as the result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court of the county in which the facility is located of his determination regarding the proposed discharge or conditional release. The clerk shall then schedule a rehearing to determine the appropriateness of respondent's release under the standards of commitment set forth in G.S. 122C-271(b). The clerk shall give notice as provided in G.S. 122C-264(d). The district attorney of the district where respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding may represent the State's interest at the hearing.

(b1) If the respondent was initially committed pursuant to G.S. 15A-1321, 15 days before the respondent's discharge or conditional release the attending physician shall notify the clerk of superior court. The clerk shall calendar a hearing and shall give notice as provided by G.S. 122C-264(d1). The district attorney for the original trial may represent the State's interest at the hearing. The hearing shall be conducted under the standards and procedures set forth in G.S. 122C-268.1. Provided, that in no event shall discharge or conditional release under this section be allowed for a respondent during the period from automatic commitment to hearing under G.S. 122C-268.1.

(c) If a committed respondent under ~~either subsection (a) or (b)~~ subsections (a), (b), or (b1) of this section is from a single portal area, the attending physician shall plan jointly with the area authority as prescribed in the area plan before discharging or releasing the respondent."

Sec. 7. G.S. 122C-261(e) reads as rewritten:

"(e) Upon receipt of the custody order of the clerk or magistrate or a custody order issued by the court pursuant to G.S. 15A-1003 ~~or G.S. 15A-1321~~, a law-enforcement officer or other person designated

in the order shall take the respondent into custody within 24 hours after the order is signed, and proceed according to G.S. 122C-263."

Sec. 8. G.S. 122C-263(b) reads as rewritten:

"(b) The examination set forth in subsection (a) of this section is not required if:

(1) The affiant who obtained the custody order is a physician or eligible psychologist who recommends inpatient commitment;

(2) The custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and he was found ~~not guilty by reason of insanity or~~ incapable of proceeding; or

(3) Repealed by Session Laws 1987, c. 596, s. 3.

In any of these cases, the law-enforcement officer shall take the respondent directly to a 24-hour facility described in G.S. 122C-252."

Sec. 9. G.S. 122C-266(b) reads as rewritten:

"(b) If the custody order states that the respondent was charged with a violent crime, including a crime involving assault with a deadly weapon, and that he was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the physician shall examine him as set forth in subsection (a) of this section. However, the physician may not release him from the facility until ordered to do so following the district court hearing."

Sec. 10. G.S. 122C-268(c) reads as rewritten:

"(c) If the respondent's custody order indicates that he was charged with a violent crime, including a crime involving an assault with a deadly weapon, and that he was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the clerk shall give notice of the time and place of the hearing as provided in G.S. 122C-264(d). The district attorney in the county in which the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding may represent the State's interest at the hearing."

Sec. 11. G.S. 122C-269(a) reads as rewritten:

"(a) In all cases where the respondent is held at a 24-hour facility pending ~~the district court~~ hearing as provided in G.S. 122C-268, G.S. 122C-268.1, 122C-276.1, or 122C-277(b1), unless the respondent through counsel objects to the venue, the hearing shall be held in the county in which the facility is located. Upon objection to venue, the hearing shall be held in the county where the petition was initiated, except as otherwise provided in subsection (c) of this section."

Sec. 12. G.S. 122C-269(c) reads as rewritten:

"(c) Upon motion of any interested person, the venue of an initial hearing described in G.S. 122C-268(c) or G.S. 122C-268.1 or a rehearing required by G.S. 122C-276(b), G.S. 122C-276.1, or ~~G.S.~~

~~122C-277(b)~~ subsections (b) or (b1) of G.S. 122C-277 shall be moved to the county in which the respondent was found not guilty by reason of insanity or incapable of proceeding when the convenience of witnesses and the ends of justice would be promoted by the change."

Sec. 13. G.S. 122C-271(b) reads as rewritten:

"(b) If the respondent has been held in a 24-hour facility pending the district court hearing pursuant to G.S. 122C-268, the court may make one of the following dispositions:

(1) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill; that he is capable of surviving safely in the community with available supervision from family, friends, or others; that based on respondent's psychiatric history, the respondent is in need of treatment in order to prevent further disability or deterioration that would predictably result in dangerousness as defined by G.S. 122C-3(11); and that the respondent's current mental status or the nature of his illness limits or negates his ability to make an informed decision voluntarily to seek or comply with recommended treatment, it may order outpatient commitment for a period not in excess of 90 days. If the commitment proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the commitment order shall so show.

(2) If the court finds by clear, cogent, and convincing evidence that the respondent is mentally ill and is dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., or is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., it may order inpatient commitment at a 24-hour facility described in G.S. 122C-252 for a period not in excess of 90 days. However, an individual who is mentally retarded and, because of an accompanying behavior disorder, is dangerous to others, as defined in G.S. 122C-3(11)b., may not be committed to a State, area or private facility for the mentally retarded. An individual who is mentally ill and dangerous to himself, as defined in G.S. 122C-3(11)a., or others, as defined in G.S. 122C-3(11)b., may also be committed to a combination of inpatient and outpatient commitment at both a 24-hour facility and an outpatient treatment physician or center for a period not in excess of 90 days. If the commitment

proceedings were initiated as the result of the respondent's being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the commitment order shall so show. If the court orders inpatient commitment for a respondent who is under an outpatient commitment order, the outpatient commitment is terminated; and the clerk of the superior court of the county where the district court hearing is held shall send a notice of the inpatient commitment to the clerk of superior court where the outpatient commitment was being supervised.

(3) If the court does not find that the respondent meets either of the commitment criteria set out in subdivisions (1) and (2) of this subsection, the respondent shall be discharged, and the facility in which he was last a client so notified.

(4) Before ordering any outpatient commitment, the court shall make findings of fact as to the availability of outpatient treatment. The court shall also show on the order the outpatient treatment physician or center who is to be responsible for the management and supervision of the respondent's outpatient commitment. When an outpatient commitment order is issued for a respondent held in a 24-hour facility, the court may order the respondent held at the facility for no more than 72 hours in order for the facility to notify the designated outpatient treatment physician or center of the treatment needs of the respondent. The clerk of court in the county where the facility is located shall send a copy of the outpatient commitment order to the designated outpatient treatment physician or center. If the outpatient commitment will be supervised in a county other than the county where the commitment originated, the court shall order venue for further court proceedings to be transferred to the county where the outpatient commitment will be supervised. Upon an order changing venue, the clerk of superior court in the county where the commitment originated shall transfer the file to the clerk of superior court in the county where the outpatient commitment is to be supervised."

Sec. 14. G.S. 122C-273(a)(4) reads as rewritten:

"(4) At any time that the outpatient treatment physician or center finds that the respondent no longer meets the criteria set out in G.S. 122C-263(d)(1), the physician or center shall so notify the court and the case shall be terminated;

provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the designated outpatient treatment physician or center shall notify the clerk that discharge is recommended. The clerk shall calendar a supplemental hearing as provided in G.S. 122C-274 to determine whether the respondent meets the criteria for outpatient commitment."

Sec. 15. G.S. 122C-275(a) reads as rewritten:

"(a) Fifteen days before the end of the initial or subsequent periods of outpatient commitment if the outpatient treatment physician or center determines that the respondent continues to meet the criteria specified in G.S. 122C-263(d)(1), he shall so notify the clerk of superior court of the county where the outpatient commitment is supervised. If the respondent no longer meets the criteria, the physician shall so notify the clerk who shall dismiss the case; provided, however, if the respondent was initially committed as a result of conduct resulting in his being charged with a violent crime, including a crime involving an assault with a deadly weapon, and the respondent was found ~~not guilty by reason of insanity or~~ incapable of proceeding, the physician or center shall notify the clerk that discharge is recommended. The clerk, at least 10 days before the end of the commitment period, on order of the district court, shall calendar the rehearing."

Sec. 16. This act is effective upon ratification and applies to all hearings and rehearings on discharge or conditional release occurring on or after the date of ratification for persons who were found not guilty by reason of insanity of commission of a crime.

In the General Assembly read three times and ratified this the 16th day of April, 1991.

S.B. 136 **CHAPTER 38**

AN ACT TO EXTEND THE LIMITED LIABILITY PROTECTION UNDER THE TRAILS SYSTEM TO LANDOWNERS, UNITS OF GOVERNMENT, TRAIL DEVELOPERS, AND TRAIL MAINTAINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-95 reads as rewritten:

"§ *113A-95.* ~~*Liability to users of the Trails System.*~~ *Trail use liability.*

(a) ~~An~~ Any person, as an owner, lessee, occupant, or ~~other person~~ otherwise in control of ~~land~~ land, who allows without compensation another person to ~~hike or~~ use the land for ~~recreational~~ scenic trail, recreation trail, connecting trail, or side trail purposes ~~as established under this Article~~ or to construct, maintain, or cause to be constructed or maintained a scenic trail, recreation trail, connecting trail, or side trail, owes the person the same duty of care he owes a trespasser.

(b) Any person who without compensation has constructed, maintained, or caused to be constructed or maintained a scenic trail, recreation trail, connecting trail, or side trail pursuant to an agreement with any person who is an owner, lessee, occupant, or otherwise in control of land on which a trail is located shall owe a person using the trail the same duty of care owed a trespasser.

(c) Unless the context otherwise requires, the following definitions shall apply in this section:

(1) 'Scenic trail' means an extended trail so located as to provide maximum potential for the appreciation of natural areas and for the conservation and enjoyment of the significant scenic, historic, natural, ecological, geological or cultural qualities of the areas through which such trail may pass.

(2) 'Recreation trail' means a trail planned principally for recreational value and may include trails for foot travel, horseback, nonmotorized bicycles, nonmotorized water vehicles, and two-wheel- and four-wheel-drive motorized vehicles.

(3) 'Connecting or side trail' means a trail which will provide additional points of public access to scenic or recreation trails or which will provide connections between such trails."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 16th day of April, 1991.

H.B. 68 **CHAPTER 39**

AN ACT TO MAKE THE UNIFORM MANAGEMENT OF INSTITUTIONAL FUNDS ACT APPLICABLE TO COMMUNITY FOUNDATION ENDOWMENT FUNDS ADMINISTERED BY BANKS OR TRUST COMPANIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 36B-1 reads as rewritten:

"§ *36B-1. Definitions.*

As used in this Chapter, the following terms have the meanings specified:

(1) 'Institution' means an incorporated or unincorporated organization organized and operated exclusively for educational, religious, charitable, or other eleemosynary purposes, or a governmental organization to the extent that it holds funds exclusively for any of these purposes;

(2) 'Institutional fund' means a fund held by an institution for its exclusive use, benefit, or purposes, but does not include (i) a fund held for an institution by a trustee that is not an ~~institution~~ institution, unless the fund is held exclusively for the benefit of either a community foundation or community trust, deemed to be 'publicly supported' under the Code, as defined in G.S. 105-134.1(1), and held by:

a. A bank;

b. A trust company; or

c. Another fiduciary

that is a trustee of the community foundation or community trust or (ii) a fund in which a beneficiary that is not an institution has an interest, other than possible rights that could arise upon violation or failure of the purposes of the fund or (iii) funds other than endowment funds held by a governmental organization;

(3) 'Endowment fund' means an institutional fund, or any part thereof, not wholly expendable by the institution on a current basis under the terms of the applicable gift instrument;

(4) 'Governing board' means the body responsible for the management of an institution or of an institutional fund;

(5) 'Historic dollar value' means the aggregate fair value in dollars of (i) an endowment fund at the time it became an endowment fund, (ii) each subsequent donation to the fund at the time it is made, and (iii) each accumulation made pursuant to a direction in the applicable gift instrument at the time the accumulation is added to the fund. The determination of historic dollar value made in good faith by the institution is conclusive.

(6) 'Gift instrument' means a will, deed, trust, grant, conveyance, agreement, memorandum, writing, or other governing document (including the terms of any institutional solicitations from which an institutional fund resulted) under which property is transferred to or held by an institution as an institutional fund."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 17th day of April, 1991.

H.B. 244 **CHAPTER 40**

AN ACT CONCERNING MUNICIPAL ELECTIONS IN THE CITY OF HIGH POINT.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the next election for Mayor and members of the City Council of High Point, North Carolina, shall be held as follows:

(1) The election shall be conducted according to the nonpartisan primary and election method of G.S. 163-294.

(2) The election shall be held on November 3, 1992, and the primary on September 1, 1992. Notices of candidacy shall be filed no earlier than 12:00 noon on the third Friday in June and no later than 12:00 noon on the third Friday in July preceding the election.

(3) For the purpose of implementing staggered terms, the terms of those elected in 1992 shall be:

Mayor	-	three years
Candidate for at-large seat receiving highest number of votes	-	five years
Candidate for at-large seat receiving second highest number of votes	-	three years
Ward 1	-	five years
Ward 2	-	five years
Ward 3	-	five years
Ward 4	-	three years
Ward 5	-	three years
Ward 6	-	three years.

Sec. 2. Elections shall be held in 1995 and thereafter to fill the expiring term for the office of Mayor, and future terms for the office of Mayor shall be for two years. In order to continue staggered terms for all city council seats, elections shall be held in 1995 and thereafter to fill expiring terms, and future terms shall be four years for all city council seats.

Sec. 3. The Charter of the City of High Point, being Chapter 501, Session Laws of 1979, as amended, is amended by adding a new sentence at the end of Article II, Section 2.2 to read:

"Each council member to be elected by the qualified voters of the city in the 1995 election and every election year thereafter shall serve for a term of four (4) years."

Sec. 4. The election procedure provided in this act shall only be effective upon adoption by the High Point City Council after a public hearing held after 14 days published notice.

Sec. 5. All provisions of the General Statutes and the High Point City Charter pertaining to High Point municipal elections not in conflict herewith shall remain effective.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of April, 1991.

S.B. 102 **CHAPTER 41**

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES REPORT CHANGES IN DOMICILIARY HOME REGULATING, LICENSING, AND MONITORING TO THE NORTH CAROLINA STUDY COMMISSION ON AGING.

Whereas, the Legislative Research Commission Study Committe on Rest Home and Nursing Home Care reported to the 1991 General Assembly that, in order to clarify and make more effective the State responsibility, authority, and accountability for domiciliary homes, there should be a single State agency to regulate, license, and monitor domiciliary homes; and

Whereas, the Secretary of the Department of Human Resources has endorsed this recommendation and has taken steps to implement the transfer of all functions affecting the regulating, licensing, and monitoring of domiciliary homes to the Division of Facility Services; and

Whereas, the General Assembly needs to follow carefully this transfer, to determine whether any further changes in the law will be required; and

Whereas, the North Carolina Study Commission on Aging is the proper vehicle to aid and advise the General Assembly in this determination; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources shall report to the North Carolina Study Commission on Aging by September 1, 1991, on the implementation of the transfer of domiciliary home

regulating, monitoring, and licensing to the Division of Facility Services. This report shall include information on the following:

(1) The completeness of the transfer;

(2) The appropriate commission to make rules for the Division of Facility Services regarding its regulating, licensing, and monitoring domiciliary homes;

(3) The effort being made to provide training and technical assistance to local county personnel; and

(4) The effort being made to establish a system of regulating, licensing, and monitoring that distributes the results of negative action recommendations, along with the rationale for these recommendations, to all local departments of social services.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

S.B. 110 **CHAPTER 42**

AN ACT TO IMPROVE THE ADMINISTRATION OF THE TAXES ON MOTOR FUELS, SPECIAL FUEL, AND MOTOR CARRIERS, AND TO TEMPORARILY RESTORE THE $40,000 CAP ON BONDS THAT MAY BE REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-433 reads as rewritten:

"*§ 105-433. Application for license as ~~distributor.~~ distributor; bond or letter of credit required.*

(a) Application. -- ~~Any distributor engaged in business on April 1, 1931, shall, within 30 days thereafter, and any other distributor shall, prior to the commencement of doing business, file a duly acknowledged application for a license with the Secretary of Revenue on a form prescribed and furnished by him setting forth the name under which such distributor transacts or intends to transact business within this State, the address of each place of business and a designation of the principal place of business. If such distributor is a firm or association, the application shall set forth the name and address of each person constituting the firm or association, and if a corporation, the names and addresses of the principal officers and such other information as the Secretary of Revenue may require.~~ Every distributor shall obtain a license from the Secretary of Revenue. To obtain a license, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file

with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary of Revenue. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address.

(b) Bond. -- Each applicant for a distributor's license must file with the Secretary of Revenue a bond or an irrevocable letter of credit. ~~distributor shall at the same time file a bond in such amount, in such form, and with such surety or sureties as may be required by the Secretary of Revenue, conditioned upon the rendition of the reports and the payment of the tax hereinafter provided for.~~ The amount of the bond ~~required by the Secretary~~ or irrevocable letter of credit may not exceed ~~the greater of (i) two thousand dollars ($2,000) or (ii)~~ two times the ~~distributor's~~ applicant's average expected monthly tax liability under this ~~Article or, in the case of an initial bond, two times the distributor's estimated average monthly tax liability under this~~ Article, as determined by the ~~Secretary.~~ Secretary, and may not be less than two thousand dollars ($2,000). ~~A distributor~~ An applicant who is also required to ~~be bonded~~ file a bond or an irrevocable letter of credit under G.S. 105-449.5 as a supplier of special fuels may file a single ~~bond,~~ bond or irrevocable letter of credit under either this section or ~~under G.S. 105-449.5,~~ G.S. 105-449.5 for the combined ~~amount required under these sections and~~ amount. A bond filed under this section shall be conditioned upon compliance with the requirements of Article 36 and Article 36A of this ~~Subchapter.~~ Subchapter, shall be payable to the State, and shall be in the form required by the Secretary of Revenue.

~~A~~ After filing a bond or an irrevocable letter of credit with an application for a distributor's license, a distributor ~~required to file a bond under this section~~ shall, within 30 days after receiving a notice from the Secretary of Revenue, file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional ~~bonds~~ bond or irrevocable letter of credit filed by the distributor, however, may not exceed the limits set in this section.

(c) Issuance. -- ~~Upon approval of the application and bond, the Secretary of Revenue shall issue to the distributor a nonassignable license with a duplicate copy for each place of business of said distributor in this State, which shall be displayed in a conspicuous~~

~~place at each such place of business and shall continue in force until surrendered or canceled. No distributor shall sell, offer for sale, or use any motor fuels within this State until such license has been issued.~~ The Secretary of Revenue shall issue a distributor's license to an applicant who meets the requirements of this section and shall issue a duplicate copy of the license for each place of business of the distributor. A distributor shall display a license issued under this section in a conspicuous place at each place of business of the distributor. A distributor's license is not transferable and remains in effect until surrendered or cancelled. ~~Any distributor failing to comply with or violating any of the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars ($100.00), nor more than five thousand dollars ($5,000), or imprisonment for not more than 24 months, or both.~~"

Sec. 2. G.S. 105-440 reads as rewritten:

"*§ 105-440. Applications for and administration of tax refunds; criminal penalty.*

(a) Annual Refunds. -- An application for an annual refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before April 15th following the end of the calendar year for which the refund is claimed. The application shall state whether or not the applicant has filed a North Carolina income tax return for the preceding taxable year, and shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(b) Quarterly Refunds. -- An application for a quarterly refund of tax permitted by this Article shall be filed with the Secretary of Revenue on or before the last day of the month following the end of the calendar quarter for which the refund is claimed. The application shall state that the applicant has paid for the fuel for which a refund is claimed or that payment for the fuel has been secured to the seller's satisfaction.

(c) Late Applications. -- ~~Applications~~ An application filed with the Secretary within six months of the date the application is due shall be ~~accepted,~~ accepted but ~~the amount of the refund shall be reduced by~~ is subject to a penalty of twenty-five percent (25%) of the amount of the refund otherwise due if the application is filed within 30 days after the date the application is due, and ~~shall be reduced by~~ is subject to a penalty of fifty percent (50%) of the amount of the refund otherwise due if the application is filed more than 30 days but within six months after the date the application is due. ~~An~~ The Secretary may not accept an application filed more than six months after the date the application is ~~due shall not be accepted.~~ due.

(d) Approval of Refund. -- If the Secretary of Revenue determines that an application for refund is correct, he shall issue the applicant a warrant upon the State Treasurer for the amount of the refund. If the Secretary determines that an application for refund is incorrect, he shall send a written notice of his determination to the applicant, stating a time and place for a hearing. If, upon holding the hearing, the Secretary finds the applicant has collected or sought to collect a refund to which he is not entitled, he shall reject the application and the applicant shall be required to pay back the tax, if any, refunded to him on the basis of the rejected application. The applicant may seek review of the Secretary's decision under G.S. 105-241.2, 105-241.3, and 105-241.4.

(e) Criminal Penalty. -- A person who knowingly makes a false application for refund to obtain a refund to which he is not entitled is guilty of a misdemeanor and is punishable by a fine of up to five hundred dollars ($500.00), imprisonment for up to two years, or both."

Sec. 3. G.S. 105-441 reads as rewritten:

"*§ 105-441. Enumeration of acts constituting misdemeanor; cancellation of license and bond.*

(a) Acts. -- Any distributor who ~~shall fail, neglect, or refuse to make the reports herein required or pay the taxes herein imposed, or who shall refuse to permit the Secretary of Revenue or any agent appointed by him, to examine the books and records of such distributor pertaining to the motor fuels made taxable by this Article or who shall make any false, or fraudulent report or statement hereunder, or who does, or attempts to do, anything whatsoever to avoid a full disclosure of the quantity of motor fuels sold, distributed or used within this State, or who fails to file an additional bond required under G.S. 105-433 shall be guilty of a misdemeanor, and, on~~ commits one or more of the following acts is guilty of a misdemeanor:

(1) Fails to obtain a license required by this Article.
(2) Willfully fails to make a report required by this Article.
(3) Willfully fails to pay a tax when due under this Article.
(4) Makes a false statement in an application, a report, or a statement required under this Article.
(5) Fails to keep records as required under this Article.
(6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the distributor's books and records concerning motor fuel.
(7) Fails to disclose the correct amount of motor fuel sold or used in this State.

(8) Fails to file an additional bond as required under this Article.

On conviction, a distributor shall be fined not less than one hundred dollars ($100.00) and not more than five thousand dollars ($5,000) or, in the case of an individual or the officer or employee charged with the duty of making ~~such~~ a report for a corporation, ~~to be~~ imprisoned not exceeding 24 months, or ~~both; and the Secretary of Revenue may forthwith cancel the license of such distributor and notify him in writing of such cancellation by registered mail to be sent to his last known address. In the event that the license of any distributor is cancelled as above provided, and in the event such distributor shall have paid to the State of North Carolina all the taxes due and payable by him under this Article, together with any and all penalties accruing under the provisions of this Article, then the Secretary of Revenue shall cancel and surrender the bond theretofore filed by said distributor.~~ both.

(b) Cancellation. -- The Secretary of Revenue may summarily cancel the license of a distributor when the Secretary finds that the distributor is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a distributor who commits one or more of the acts listed in subsection (a) after holding a hearing on whether the license should be cancelled.

The Secretary of Revenue shall send a distributor whose license is summarily cancelled a notice of the cancellation and shall give the distributor an opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary of Revenue shall give a distributor whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing shall be sent by registered mail to the last known address of the distributor.

When the Secretary cancels the license of a distributor, the Secretary shall return the bond or irrevocable letter of credit filed by the distributor if the distributor has paid all taxes and penalties due under this Article."

Sec. 4. G.S. 105-446 reads as rewritten:

"*§ 105-446. Refund for tax on motor fuel used other than to propel a motor vehicle.*

A person who purchases and uses motor fuel for a purpose other than to operate a licensed motor vehicle may receive an annual ~~refund,~~ refund for the tax the person paid on fuel used during the preceding calendar ~~year,~~ year at a rate equal to the amount of the flat cents-per-gallon rate in effect during the year for which the refund is claimed plus the average of the two variable cents-per-gallon rates in

effect during that year, less one cent (1¢) per gallon. An application for a refund allowed under this section shall be made in accordance with G.S. 105-440."

Sec. 5. G.S. 105-449.2 reads as rewritten:

"*§ 105-449.2. Definitions.*

The following ~~words, terms and phrases as used in this Article are, for the purposes thereof, hereby defined as follows:~~ definitions apply in this Article:

~~(1)~~ ~~"Secretary" shall mean the Secretary of Revenue.~~

~~(2)~~ ~~"Motor vehicle" means a self-propelled vehicle that is designed for use on a highway.~~

~~(3)~~ ~~"Fuel" means combustible gases and liquids, other than those subject to tax under Article 36, that are or can be used to generate power to propel a motor vehicle.~~

~~(4)~~ ~~"Highway" shall mean and include every way or place of whatever nature open to the use of the public for purposes of vehicular travel in this State, including the streets and alleys in towns and cities.~~

~~(5)~~ ~~"Person" shall mean and include natural persons and partnerships, firms, associations and corporations.~~

~~(6)~~ ~~"Use" shall mean and include, in addition to its original meaning, the receipt of fuel by any person into the fuel supply tank of a motor vehicle or into a receptacle for which fuel is supplied by any person to his own or other motor vehicles.~~

~~(7)~~ ~~"User" means a person who owns or operates a fuel-propelled motor vehicle licensed under Chapter 20 and who does not maintain storage facilities for fueling the vehicle.~~

~~(8)~~ ~~a. "User-seller" shall mean a bulk user or reseller as defined in this subdivision:~~

~~b. "Bulk user" means any person who maintains storage facilities in excess of 100 gallons and stores fuel therein, and who dispenses such fuel into the fuel tanks of, or attached to, motor vehicles owned, leased or operated by him.~~

~~c. "Reseller" means any person who maintains storage facilities in excess of 100 gallons and stores fuel therein, and who sells and/or dispenses such fuel to the public at retail locations into the fuel tanks of, or attached to, motor vehicles.~~

~~(9)~~ ~~"Supplier" means a person who:~~

~~a. Sells or delivers fuel to a user-seller; or~~

~~b. Maintains an inventory of fuel, part or all of which he uses or sells for use in a motor vehicle, and is not required to be licensed as a user-seller; or~~

~~c. Imports fuel, other than in the usual tank or receptacle connected with the engine of a motor vehicle, into the State for his own use.~~

~~(10) Repealed by Session Laws 1985 (Reg. Sess., 1986), c. 937, s. 14, effective July 8, 1986.~~

~~(11) "Liquid" means any substance which is liquid at temperature in excess of 60 degrees F. and a pressure of 14.7 pounds per square inch absolute.~~

(1) Fuel. -- A combustible gas or liquid that can be used to generate power to propel a motor vehicle and that is not subject to tax under Article 36 of this Chapter.

(2) Highway. -- Defined in G.S. 20-4.01(13).

(3) Liquid. -- A substance that is liquid at a temperature above 60 degrees F. and a pressure greater than 14.7 pounds per square inch absolute.

(4) Motor vehicle. -- A self-propelled vehicle that is designed for use on a highway.

(5) Person. -- An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.

(6) Secretary. -- The Secretary of Revenue.

(7) Supplier. -- A person who does one or more of the following:

a. Acquires fuel for sale or delivery to a user-seller.

b. Maintains an inventory of fuel, part or all of which the person uses in a motor vehicle or sells to someone other than a user-seller for use in a motor vehicle.

c. Imports fuel into the State, by a means other than the usual tank or receptacle connected with the engine of a motor vehicle, for use in a motor vehicle owned or operated by that person.

(8) Use. -- The term includes the receipt of fuel in the fuel supply tank of a motor vehicle and the receipt of fuel in a receptacle from which fuel is supplied to a motor vehicle.

(9) User. -- A person who owns or operates a motor vehicle licensed under Chapter 20 and who does not maintain storage facilities for fueling the motor vehicle.

(10) User-seller. -- A bulk-user or a reseller.

A bulk-user is a person who maintains storage facilities for fuel and who dispenses the fuel into the fuel supply

tank of, or attached to, a motor vehicle owned or operated by that person.

A reseller is a person who maintains storage facilities for fuel and who sells the fuel at retail or dispenses the fuel at a retail location into the fuel supply tank of, or attached to, a motor vehicle."

Sec. 6. G.S. 105-449.4 reads as rewritten:

"§ *105-449.4. Application for supplier's license.*

~~To procure such license every supplier shall file with the Secretary an application upon oath in such form as the Secretary may prescribe setting forth the name and address of the supplier and such other information as the Secretary may require.~~ To obtain a license as a supplier, an applicant must file an application with the Secretary on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership, the applicant must designate an agent for service of process and give the agent's name and address."

Sec. 7. G.S. 105-449.5 reads as rewritten:

"§ *105-449.5. Supplier to file bond.*

~~A~~ The Secretary may not issue a supplier's license ~~shall not be issued~~ to an applicant until the applicant has filed with the Secretary a bond ~~in the approximate sum of~~ or an irrevocable letter of credit. The amount of the bond or irrevocable letter of credit may not exceed two times the applicant's average expected monthly tax ~~due to be paid by the supplier,~~ liability under this Article, as determined by the Secretary, ~~but the amount of the bond shall in no case~~ and may not be less than five hundred dollars ($500.00). ~~Such bond shall be in such form and with such surety or sureties as may be required by the Secretary, conditioned upon making proper reports and paying the tax provided for in this Article, and otherwise complying with the provisions of this Article. A supplier~~ An applicant who is also required to ~~be bonded~~ file a bond or an irrevocable letter of credit under G.S. 105-433 as a distributor of motor fuels may file a single ~~bond,~~ bond or irrevocable letter of credit under either this section or ~~under~~ G.S. 105-433 for the combined ~~amount required under these sections, and~~ amount. A bond filed under this section shall be conditioned upon compliance with the requirements of Article 36 and Article 36A of this

~~Subchapter.~~ Subchapter, shall be payable to the Secretary, and shall be in the form required by the Secretary.

~~A~~ After filing a bond or an irrevocable letter of credit with an application for a supplier's license, a supplier ~~required to file a bond under this section~~ shall, within 30 days after receiving a notice from the Secretary, file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional ~~bonds~~ bond or irrevocable letter of credit filed by the supplier, however, may not exceed the limits set in this section."

Sec. 8. G.S. 105-449.7 reads as rewritten:

"§ *105-449.7. Issue of supplier's license.*

The ~~application in proper form having been accepted for filing, and the other conditions and requirements of this Article having been complied with, the Secretary shall issue to such supplier a license and such license shall remain in full force and effect, unless cancelled as provided in this Article.~~ Secretary shall issue a supplier's license to an applicant who meets the requirements of this Article. A supplier's license remains in effect until cancelled. A supplier is considered an agent and trust officer of the State for the collection of the tax imposed by this Article."

Sec. 9. G.S. 105-449.14 reads as rewritten:

"§ *105-449.14. Power of Secretary to cancel licenses.*

~~If a licensee shall at any time file a false report of any data or information required by this Article, or shall fail, refuse or neglect to file any report as required by this Article, or to pay the full amount of any tax required by this Article, or if a supplier fails to file an additional bond required under G.S. 105-449.5 or fails to keep accurate records of quantities of fuel received, produced, refined, manufactured, compounded, sold or used in this State, or if a user-seller fails to maintain accurately any required records, the Secretary may forthwith cancel his license and notify him in writing of such cancellation by registered mail sent to his last address appearing on the files of the Secretary.~~

The Secretary may cancel any license issued under this Article upon the written request of the licensee. The Secretary may summarily cancel the license of a supplier when the Secretary finds that the supplier is incurring liability for the tax imposed under this Article after failing to pay a tax when due under this Article. In addition, the Secretary may cancel the license of a supplier or any other licensee who commits one or more of the acts listed in G.S. 105-449.34 after holding a hearing on whether the license should be cancelled.

The Secretary shall send a supplier whose license is summarily cancelled a notice of the cancellation and shall give the supplier an

opportunity to have a hearing on the cancellation within 10 days after the cancellation. The Secretary shall give a licensee whose license may be cancelled after a hearing at least 10 days' written notice of the date, time, and place of the hearing. A notice of a summary license cancellation and a notice of hearing shall be sent by registered mail to the last known address of the licensee.

When the Secretary cancels the license of a supplier, the Secretary shall return the bond or irrevocable letter of credit filed by the supplier if the supplier has paid all taxes and penalties due under this Article."

Sec. 10. G.S. 105-449.17 reads as rewritten:

"§ *105-449.17.* ~~*Certain exempt sales.*~~ *Exemption for fuel sold for nonhighway use.*

~~Sales of fuels to a user-seller shall be exempt from the tax levied under the provisions of this Article when such user-seller purchases said fuel for nonhighway uses or for sale for nonhighway use and maintains storage facilities for such fuel separate and apart from facilities servicing motor vehicles, providing such storage facilities are plainly marked in such manner as the Secretary may prescribe to indicate that nontaxpaid fuel is contained therein. Suppliers shall make reports of such sales, in such form as the Secretary may require, each month on monthly tax report forms. Each user-seller shall maintain such records as the Secretary may prescribe of all nontaxpaid fuel purchased pursuant to this section. All records of nontaxable sales and purchases made pursuant to this section shall be subject to audit by deputies, employees or other agents of the Secretary.~~ The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user-seller when the fuel is for a purpose other than to propel a motor vehicle and the supplier dispenses the fuel into a storage facility of the user-seller that is marked with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates the fuel is not to be used to propel a motor vehicle. A supplier is liable for the tax due on fuel dispensed into a storage facility of a user-seller that is not marked to indicate the fuel is to be used for a purpose other than to propel a motor vehicle. A user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked for nonhighway use and is subsequently used or sold for use to propel a motor vehicle."

Sec. 11. G.S. 105-449.20 reads as rewritten:

"§ *105-449.20. When Secretary may estimate* ~~*fuel sold, delivered or used,*~~ *tax liability of supplier or user-seller.*

Whenever ~~any person shall neglect or refuse~~ a supplier or a user-seller fails to ~~make and~~ file ~~any~~ a report ~~for any calendar month as required by this Article or shall file an incorrect or fraudulent report,~~ under G.S. 105-449.19 or 105-449.21 or files a false report under

one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the ~~person has incurred liability under the special fuels tax laws of the State.~~ supplier or user-seller owes tax under this Article. ~~In all cases where a~~ When a user-seller ~~actually~~ sells or uses ~~an amount in addition to that reported~~ more fuel than the user-seller reports to the Secretary as having been purchased from a ~~supplier licensed under this Article proof of such additional sales or use shall constitute prima facie evidence that all fuel in excess of that so reported was acquired tax-free.~~ supplier, the user-seller is presumed to have acquired the additional fuel tax-free to propel a motor vehicle."

Sec. 12. G.S. 105-449.34 reads as rewritten:

"*§ 105-449.34. Acts and omissions declared to be misdemeanors; penalties.*

A person ~~shall be~~ who commits one or more of the following acts is guilty of a ~~misdemeanor if he wilfully violates any of the provisions of this Article, a penalty for which is not otherwise provided, or if he shall:~~

~~(1) Wilfully fail or refuse to pay the tax imposed by this Article, or~~

~~(2) Engage in business in this State as a supplier or user- seller without being the holder of an uncancelled license to engage in such business, or~~

~~(3) Wilfully fail to make any of the reports required by this Article, or~~

~~(4) Make any false statement in any application, report or statement required by this Article, or~~

~~(5) Refuse to permit the Secretary or any deputy to examine records as provided by this Article, or~~

~~(6) Fail to keep proper records of quantities of fuel received, produced, refined, manufactured, compounded, sold, used or delivered in this State as required by this Article, or~~

~~(7) Make any false statement on any delivery ticket or invoice as to the quantity of fuel delivered, sold or used; or make any false statement in connection with a report, or an application for the refund of any moneys or taxes provided in this Article.~~ misdemeanor:

(1) Fails to obtain a license required by this Article.

(2) Willfully fails to make a report required by this Article.

(3) Willfully fails to pay a tax when due under this Article.

(4) Makes a false statement in an application, a report, or a statement required under this Article.

(5) Fails to keep records as required under this Article.

(6) Refuses to allow the Secretary of Revenue or a representative of the Secretary of Revenue to examine the licensee's books and records concerning fuel.

(7) Fails to disclose the correct amount of fuel sold or used in this State.

(8) Fails to file an additional bond as required under this Article."

Sec. 13. G.S. 105-449.48 reads as rewritten:

"§ *105-449.48. Fees ~~paid~~ and civil penalties credited to Highway Fund.*

All fees collected under this Article and all civil penalties collected under G.S. 105-449.52 shall be ~~paid~~ credited to the Highway Fund."

Sec. 14. G.S. 105-449.52 reads as rewritten:

"§ *105-449.52. ~~Violators to pay penalty and furnish bond.~~ Penalty for operating a motor vehicle without a registration card or an identification marker.*

(a) Penalty. -- ~~When any person is discovered in this State operating a vehicle in violation of the provisions of this Article, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle, until he shall pay to the Department of Revenue a penalty of seventy-five dollars ($75.00). Such penalty may be paid to an agent of the Division of Motor Vehicles. All penalties received by the Department of Revenue under this section shall be paid into the Highway Fund.~~ A motor carrier who operates in this State or causes to be operated in this State a motor vehicle that does not carry the registration card required by this Article or does not display an identification marker in accordance with this Article is subject to a civil penalty of seventy-five dollars ($75.00). The penalty is payable to the Department of Revenue or the Division of Motor Vehicles. When a motor vehicle is found to be operating without a registration card or an identification marker, the motor vehicle may not be driven for a purpose other than to park the motor vehicle until the penalty imposed under this section is paid unless the officer that imposes the penalty determines that operation of the motor vehicle will not jeopardize collection of the penalty.

(b) Hearing. -- Any person denying ~~his~~ liability for ~~such~~ a penalty imposed under this section may pay the ~~same~~ penalty under ~~protest. He may~~ protest and apply to the Department of Revenue for a ~~hearing, and said~~ hearing. Upon receiving a request for a hearing, the Secretary shall schedule a hearing ~~shall be granted~~ before a duly designated employee or agent of the Department within 30 days after receipt of the ~~request for such hearing.~~ request. If after ~~said~~ the hearing the Department determines that the person was not liable for the penalty, the amount collected shall be ~~refunded to him.~~ refunded.

If after ~~said~~ the hearing the Department determines that the person was liable for ~~said~~ the penalty, the person paying the penalty may bring an action in the Superior Court of Wake County against the Secretary of Revenue for refund of the penalty. No restraining order or injunction shall issue from any court of the State to restrain or enjoin the collection of the penalty or to permit the operation of ~~said~~ the vehicle without payment of the ~~penalty prescribed herein.~~ penalty.

~~In addition, the Secretary may, if he deems it desirable or necessary to secure compliance with the provisions of this Article, require the furnishing of a bond to the Secretary in the amount of two hundred dollars ($200.00), in such form and with such surety or sureties as he may prescribe, conditioned on registering or making an application for registration in accordance with this Article within 10 days and conditioned on the payment of any taxes found to be due pursuant to this Article. In cases where the Secretary shall require such bond, it shall be unlawful for anyone thereafter to operate said vehicle on the streets or highways of this State, except to remove it from the street or highway for purposes of parking or storing said vehicle, unless and until said bond is furnished.~~

~~Whenever the Secretary is required to exercise his discretion under the provisions of this section, such discretion may be exercised by him or by a duly designated agent or employee of the Division of Motor Vehicles or the Department of Revenue.~~"

Sec. 15. Notwithstanding the provisions of G.S. 105-433, the maximum bond or letter of credit that may be required of a distributor under that section is forty thousand dollars ($40,000). Notwithstanding the provisions of G.S. 105-449.5, the maximum bond or letter of credit that may be required of a supplier under that section is forty thousand dollars ($40,000). A distributor or supplier required to file a bond or letter of credit under both sections may file a single bond or letter of credit for the combined amount required up to a maximum of eighty thousand dollars ($80,000).

Sec. 16. G.S. 105-269.3 reads as rewritten:

"§ *105-269.3.* ~~*Article applicable to gasoline and fuel taxes and gasoline and oil inspection fees.*~~ *Administration and enforcement of Subchapter V and fuel inspection fee.*

~~The provisions of this Article shall be applicable~~ This Article applies to taxes levied under Subchapter V of this Chapter ~~105 of the General Statutes~~ and to inspection fees levied under Chapter 119 of the General Statutes. The State Highway Patrol and law enforcement officers and other appropriate personnel in the Division of Motor Vehicles of the Department of Transportation may assist the Department of Revenue in enforcing Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes. The State Highway

Patrol and law enforcement officers of the Division of Motor Vehicles have the power of peace officers in matters concerning the enforcement of Subchapter V of this Chapter and Article 3 of Chapter 119 of the General Statutes."

Sec. 17. G.S. 105-449.55 and 105-449.56 are repealed.

Sec. 18. Section 15 of this act is effective retroactively as of January 1, 1991, and expires July 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

S.B. 243 **CHAPTER 43**

AN ACT TO MAKE APPOINTMENTS TO PUBLIC OFFICE UPON THE RECOMMENDATION OF THE PRESIDENT PRO TEMPORE OF THE SENATE.

Whereas, G.S 120-121 authorizes the General Assembly to make certain appointments to public office upon the recommendation of the President Pro Tempore of the Senate; and

Whereas, the President Pro Tempore of the Senate has made such recommendations; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. James H. Edwards of Caldwell County is appointed to the Private Protective Services Board for a term to expire on June 30, 1993.

Sec. 2. Steven Levitas of Wake County is appointed to the Genetic Engineering Review Board for a term to expire on June 30, 1992.

Sec. 3. Clarence Leroy Smith of Pitt County is appointed to the North Carolina Solid Waste Capital Projects Financing Agency for a term to expire on June 30, 1991.

Sec. 4. Patricia Murphy Holland of Randolph County is appointed to the North Carolina Board of Electrolysis Examiners for a term to expire on August 31, 1993.

Sec. 5. This act is effective upon ratification, and appointments made by this act are effective on that date.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

H.B. 48 **CHAPTER 44**

AN ACT TO PERMIT CERTAIN RADIO EMERGENCY ASSOCIATED CITIZENS TEAMS (REACT) VEHICLES TO ACTIVATE AMBER LIGHTS WHILE OPERATING ON THE HIGHWAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.2 reads as rewritten:

"*§ 20-130.2. Use of amber lights on certain vehicles.*

All wreckers operated on the highways of the State shall be equipped with an amber-colored flashing light which shall be so mounted and located as to be clearly visible in all directions from a distance of 500 feet, which light shall be activated when at the scene of an accident or recovery operation and when towing a vehicle which has a total outside width exceeding 96 inches or which exceeds the width of the towing vehicle. It shall be lawful to equip any other vehicle with a similar warning light including, but not by way of limitation, maintenance or construction vehicles or equipment of the Department of Transportation engaged in performing maintenance or construction work on the roads, maintenance or construction vehicles of any person, firm or corporation, Radio Emergency Associated Citizens Team (REACT) vehicles, and any other vehicles required to contain a warning light. ~~Radio Emergency Associated Citizens Team (REACT) vehicles may be equipped with amber lights which shall be actived only when the vehicles are parked.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

H.B. 61 **CHAPTER 45**

AN ACT TO MAKE TECHNICAL CHANGES TO THE REVENUE LAWS AND RELATED STATUTES.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-33.1. Definitions.*

The following definitions apply in this Article:

(1) Code. The Internal Revenue Code as enacted as of January 1, 1991, including any provisions enacted as of that date which become effective either before or after that date.

(2) Municipality. A municipal corporation organized under the laws of this State.

(3) Person. An individual, a firm, a partnership, an association, a corporation, or another organization or group acting as a unit.

(4) Secretary. The Secretary of Revenue."

Sec. 2. G.S. 105-37.1(d) reads as rewritten:

"(d) It is not the purpose of this Article to discourage agricultural fairs in the State, and to further this cause, no carnival company taxable under this section ~~will be allowed to~~ may play a 'still date' in any county where there is a regularly advertised agricultural fair, 30 days prior to the dates of the fair. ~~Nothing contained in this section shall prevent veterans' organizations and posts chartered by Congress or organized and operated on a statewide or nationwide basis from holding fairs or tobacco festivals on any dates which they may select, provided such fairs or festivals have been held as annual events prior to 1 July 1988.~~ This subsection does not restrict the date on which a fair or tobacco festival may be held if (i) it is held by a veteran's organization or post chartered by Congress or organized and operated on a statewide or nationwide basis and (ii) the organization or post has held the fair or festival annually since before July 1, 1988."

Sec. 3. G.S. 105-83(d) reads as rewritten:

"(d) This section ~~shall~~ does not apply to corporations ~~organized under the State or national banking laws.~~ liable for the tax levied under G.S. 105-102.3."

Sec. 4. G.S. 105-88(b) reads as rewritten:

"(b) Nothing in this section shall be construed to apply to banks, industrial banks, trust companies, building and loan associations, ~~cooperative credit unions, nor installment paper dealers defined and taxed under other sections of this Article,~~ or cooperative credit unions, nor shall it apply to the business of negotiating loans on real estate as described in G.S. 105-41, nor to pawnbrokers lending or advancing money on specific articles of personal property, nor to insurance premium finance companies licensed under Article 35 of Chapter 58 of the General Statutes. It shall apply to those persons or concerns operating what are commonly known as loan companies or finance companies and whose business is as hereinbefore described, and those persons, firms, or corporations pursuing the business of lending money and taking as security for the payment of such loan and interest an assignment of wages or an assignment of wages with power of attorney to collect same, or other order or chattel mortgage or bill of sale upon household or kitchen furniture. No real estate mortgage broker shall be required to obtain a privilege license under this section merely because he advances his own funds and takes a security

interest in real estate to secure such advances and when, at the time of such advance of his own funds, he has already made arrangements with others for the sale or discount of the obligation at a later date and does so sell or discount such obligation within the period specified in said arrangement or extensions thereof; or when, at the time of the advance of his own funds, he intends to sell the obligation to others at a later date and does, within 12 months from date of initial advance, make arrangements with others for the sale of said obligation and does sell the obligation within the period specified in said arrangement or extensions thereof; or because he advances his own funds in temporary financing directly involved in the production of permanent-type loans for sale to others; and no real estate mortgage broker whose mortgage lending operations are essentially as described above shall be required to obtain a privilege license under this section."

Sec. 5. G.S. 105-102.5(b)(10) reads as rewritten:

"(10) Manufacturing ice cream using counter freezer equipment and selling the ice cream at retail; and selling at retail ice cream purchased from a manufacturer other than a manufacturer who has paid the tax imposed in G.S. 105-97(a). For the purpose of this subdivision, 'ice cream' means ice cream, frozen custards, sherbets, water ices, yogurt, and/or similar frozen products."

Sec. 6. G.S. 105-130.27(f) and G.S. 105-151.6(f) are repealed.

Sec. 7. G.S. 105-131.8(b) reads as rewritten:

"(b) Each shareholder of an S Corporation ~~shall be~~ is allowed as a credit against the tax imposed by Division II of this Article ~~in~~ an amount equal to the shareholder's pro rata share of the tax credits for which the S Corporation is eligible."

Sec. 8. G.S. 105-134.2(b) reads as rewritten:

"(b) In lieu of the tax imposed by subsection (a) of this section, there is imposed for each taxable year upon the North Carolina taxable income of every individual a tax determined under tables, applicable to the taxable year, which may be prescribed by the ~~Secretary of Revenue.~~ Secretary. ~~The tables prescribed under this subsection shall be in the form the Secretary deems appropriate, and the~~ The amounts of the tax determined under the tables shall be computed on the basis of the rates prescribed by subsection (a) of this section. This subsection does not apply to an individual making a return under section 443(a)(1) of the Code for a period of less than 12 months on account of a change in the individual's annual accounting period, or to an estate or trust. The tax imposed by this subsection shall be treated as the tax imposed by subsection (a) of this section."

Sec. 9. G.S. 105-134.6(c)(2) reads as rewritten:

"(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code. ~~The Secretary shall report to the 1991 General Assembly all provisions under the Code for taxing certain amounts separately and shall recommend whether those amounts should be taxed separately under this Division or should be added to taxable income in calculating North Carolina taxable income.~~"

Sec. 10. G.S. 105-151.12(e) reads as rewritten:

"(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before ~~31 December 1994~~ December 31, 1994, to qualify for the credit allowed by this section."

Sec. 11. G.S. 105-151.20 reads as rewritten:

"*§ 105-151.20. Credit for tax paid on certain government retirement benefits.*

A taxpayer who received government retirement benefits during the 1988 tax year may claim a credit against the tax imposed by this Division equal to the amount by which the tax under this Division paid by the taxpayer for the 1988 tax year would have been reduced if none of the taxpayer's government retirement benefits had been included in the taxpayer's taxable income. If a taxpayer received a refund of any tax paid under this Division on government retirement benefits for the 1988 tax year, the amount of the refund reduces the amount of the credit allowed under this section.

As used in this section, the term 'government retirement benefits' means retirement benefits received from one or more state, local, or federal government retirement plans. As used in this section, the term '1988 tax year' means the taxpayer's taxable year beginning on a day in 1988.

The credit allowed under this section shall ~~shall~~ be taken in equal installments over the taxpayer's first three taxable years beginning on or after January 1, 1990. The credit allowed under this section may not exceed the amount of tax imposed by this Division reduced by the sum of all credits allowed against the tax, except payments of tax made by or on behalf of the taxpayer."

Sec. 12. G.S. 105-155(c) reads as rewritten:

"(c) There shall be annexed to the return the affirmation of the taxpayer making the return in the following form: 'Under penalties prescribed by law, I hereby affirm that to the best of my knowledge and belief this return, including any accompanying schedules and statements, is true and complete.' ~~complete. (If~~ If the return was

prepared by a person other than the taxpayer, ~~that~~ the preparer's affirmation shall state that it is based on all information of which the preparer has any ~~knowledge.)~~ knowledge. The Secretary shall prepare blank forms for the returns, distribute them throughout the State, and furnish them upon application; but failure to receive or secure the form shall not relieve any taxpayer from the obligation of filing a return required by this Division."

Sec. 13. G.S. 105-159.1(a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the ~~amount of tax paid by him or her to the Department~~ tax shall be paid to the State Treasurer for the use of all political parties. In the case of a married couple filing a joint return whose income tax liability for the taxable year is two dollars ($2.00) or more, each spouse may designate on the income tax return that one dollar ($1.00) of the tax shall be paid to the State Treasurer for the use of all political parties. ~~by the Secretary~~ The Secretary shall credit all amounts so designated to the State Treasurer for the use of all political parties upon a pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections. ~~Elections; Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any of these funds, and the registration of such a party shall not be included in calculating the pro rata distribution.~~ As used in this section, the term 'political party' means one of the following that has at least one percent (1%) of the total number of registered voters in the State:

(1) ~~a~~ A political party ~~which~~ that at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential ~~electors,~~ electors.

(2) ~~a~~ A group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

Sec. 14. (a) G.S. 105-163.07 is recodified as G.S. 105-151.21 and reads as rewritten:

"§ ~~*105-163.07. Income tax credit for property taxes paid on farm machinery by individuals and certain corporations.*~~ *105-151.21. Credit for property taxes paid on farm machinery.*

(a) Credit. An individual ~~farmer, or a corporation that is~~ engaged in the business of farming ~~and has elected to be treated as an "S corporation" under the Code, that pays property taxes on farm machinery, or attachments and repair parts for farm machinery,~~ is

allowed a credit against the tax imposed by this Division equal to the amount of property taxes the individual paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. In addition, an individual shareholder of an S Corporation engaged in the business of farming is allowed a credit against the tax imposed by this Division equal to the shareholder's pro rata share of the amount of property taxes the S Corporation paid at par during the taxable year on farm machinery and on attachments and repair parts for farm machinery. The total credit allowed under this section may not exceed one thousand dollars ($1,000) for the taxable year and may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer. To claim the credit, the taxpayer shall attach to the return a copy of the tax receipt for the property taxes for which credit is claimed. The receipt must indicate that the taxes have been paid and the amount and date of the payment.

(b) Definitions. The following definitions apply in this section:

(1) Farm machinery. Machinery subject to State sales tax at the rate of one percent (1%) under G.S. 105-164.4(a)(1d)a.

(2) Property taxes. The principal amount of taxes levied and assessed by a taxing unit under Subchapter II of this Chapter. The term does not include costs, penalties, interest, or other charges that may be added to the principal amount.

(3) Taxing unit. Defined in G.S. 105-273.

(c) Adjustment. If a taxing unit gives a taxpayer a credit or refund for any of the property taxes for which the taxpayer claimed a credit under this section, the taxpayer shall notify the Secretary within 90 days. The Secretary shall then recompute the credit allowed under this section and make any resulting adjustment of income tax for the taxable year for which the credit was claimed. ~~credit, not to exceed one thousand dollars ($1,000), against the income tax imposed by this Article equal to the amount of property taxes paid, at par by that individual or corporation during the taxable year, on the farm machinery and attachments and repair parts for the machinery. As used in this section, "farm machinery" means machinery that:~~

~~(1) Is used in planting, cultivating, harvesting, or curing farm crops or in producing dairy products, poultry, eggs, or livestock; and~~

~~(2) Is subject to State sales tax at the rate of one percent (1%) under G.S. 105-164.4(1)g.~~"

(b) The remainder of Division IV of Article 4 of Chapter 105 of the General Statutes is repealed.

(c) G.S. 105-320(a)(16) reads as rewritten:

"(16) The total assessed value of farm machinery, attachments, and repair parts of individual owners and Subchapter ~~"S"~~ S corporations engaged in farming subject to the income tax credit in G.S. ~~105-163.07~~ 105-151.21 and the amount of ad valorem taxes due by an individual farmer or a Subchapter ~~"S"~~ S corporation engaged in farming on farm machinery, attachments, and repair parts subject to that credit."

Sec. 15. G.S. 105-164.3(5) reads as rewritten:

"(5) 'Engaged in business' ~~shall mean~~ means maintaining, occupying or using permanently or temporarily, directly or indirectly, or through a subsidiary or agent, by whatever name called, any office, place of distribution, sales or sample room or place, warehouse or storage place, or other place of business, for the selling or delivering of tangible personal property for storage, use or consumption in this State, or permanently or temporarily, directly or through a subsidiary, having any representative, agent, salesman, canvasser or solicitor operating in this State in such selling or delivering, and the fact that any corporate retailer, agent or subsidiary engaged in business in this State may not be legally domesticated or qualified to do business in this State ~~shall be~~ is immaterial. It ~~shall also mean the~~ also means maintaining in this State, either permanently or temporarily, directly or through a subsidiary, tangible personal property for the purpose of lease or rental. It ~~shall also mean~~ also means making a mail order sale, as defined in ~~subdivision (8a) of~~ this section, if one of the conditions listed in G.S. 105-164.8(b) is met."

Sec. 16. G.S. 105-164.8(b) reads as rewritten:

"(b) A retailer who makes a mail order sale is engaged in business in this State and is subject to the tax levied under this Article if one of the following conditions is met:

(1) The retailer is a corporation engaged in business under the laws of this State or a person domiciled in, a resident of, or a citizen of, this State;

(2) The retailer maintains retail establishments or offices in this State, whether the mail order sales thus subject to taxation by this State result from or are related in any other way to the activities of such establishments or offices;

(3) The retailer has representatives in this State who solicit business or transact business on behalf of the retailer, whether the mail order sales thus subject to taxation by this

State result from or are related in any other way to such solicitation or transaction of business;

~~(4) The property was delivered in this State in fulfillment of a sales contract that was entered into in this State, in accordance with applicable conflict of laws rules, when a person in this State accepted an offer by ordering the property;~~

(5) The retailer, by purposefully or systematically exploiting the market provided by this State by any media-assisted, media-facilitated, or media-solicited means, including direct mail advertising, distribution of catalogues, computer-assisted shopping, television, radio or other electronic media, telephone solicitation, magazine or newspaper advertisements, or other media, creates nexus with this State;

(6) Through compact or reciprocity with another jurisdiction of the United States, that jurisdiction uses its taxing power and its jurisdiction over the retailer in support of this State's taxing power; or

(7) The retailer consents, expressly or by implication, to the imposition of the tax imposed by this Article. For purposes of this subdivision, evidence that a retailer engaged in the activity described in subdivision (5) shall be prima facie evidence that the retailer consents to the imposition of the tax imposed by this Article."

Sec. 17. G.S. 105-164.13(14) reads as rewritten:

"(14) ~~Holy Bibles; public~~ Public school books on the adopted list, the selling price of which is fixed by State contract."

Sec. 18. G.S. 105-164.44A is repealed.

Sec. 19. G.S. 105-265 is repealed.

Sec. 20. G.S. 105-130.35 is recodified as G.S. 105-269.5 and reads as rewritten:

"§ ~~*105-130.35. Contribution of corporate income tax refunds to Wildlife Fund for management of nongame and endangered species.*~~ *105-269.5. Contribution of income tax refund to Wildlife Fund.*

Any taxpayer ~~that is~~ entitled to a refund of income taxes ~~paid as provided by this Article~~ under Article 4 of this Chapter may elect to contribute all or ~~any part of such~~ part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary of Revenue shall provide appropriate language and space on the ~~corporation~~ income tax form in which to make the election. ~~such election and shall note the same in his instructions as a contribution~~

~~qualifying as a deduction under G.S. 105-130.9(2). Any such~~ The taxpayer's election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. ~~All of such contributions shall be transmitted~~ The Secretary of Revenue shall transmit the contributions made pursuant to this section to the State Treasurer for credit to the Wildlife Fund ~~which shall be made available to the~~ to be used by the Wildlife Resources Commission only for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for ~~such~~ these purposes."

Sec. 21. Article 9 of Chapter 105 of the General Statutes, as amended by this act, is further amended by adding at the end a new section to read:

"*§ 105-269.6. Contribution of individual income tax refund to Candidates Financing Fund.*

An individual entitled to a refund of income taxes under Division II of Article 4 of this Chapter may elect to contribute all or part of the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary of Revenue shall provide appropriate language and space on the individual income tax form in which to make the election. The election becomes irrevocable upon filing the individual's income tax return for the taxable year. The Secretary of Revenue shall, on a quarterly basis, transmit the contributions made pursuant to this section to the State Treasurer for credit to the North Carolina Candidates Financing Fund. Any interest earned on funds so credited shall be credited to that Fund."

Sec. 22. G.S. 105-163.16 reads as rewritten:

"*§ 105-163.16. Overpayment refunded.*

(a) Where the amount of wages withheld at the source under G.S. 105-163.2 exceeds the tax imposed by Article 4 of this Chapter against which the tax so withheld may be credited under G.S. 105-163.10, the ~~amount of such~~ excess shall be considered an overpayment by the employee. ~~employee, and, notwithstanding the provisions of G.S. 105-266 and 105-266.1, overpayment by the employee shall be refunded by the Secretary under the provisions of this section unless the taxpayer elects to apply the overpayment to his estimated income tax liability for the following year pursuant to G.S. 105-269.4.~~

(b) If the amount of estimated tax paid under G.S. 105-163.15 exceeds the taxes imposed by Article 4 of this Chapter against which the estimated tax so paid may be credited under the provisions of this Article, the excess shall be considered an overpayment by the taxpayer. ~~taxpayer, and, notwithstanding the provisions of G.S. 105-266 and G.S. 105-266.1, this overpayment by the taxpayer shall~~

~~be refunded by the Secretary under the provisions of this section unless the taxpayer elects to apply the overpayment to his estimated income tax liability for the following year pursuant to G.S. 105-269.4.~~

(c) ~~Where there has been an overpayment (as specified in subsections (a) and (b) of this section)~~ Notwithstanding G.S. 105-266 and G.S. 105-266.1, an overpayment of any tax imposed under Article 4 of this Chapter, as disclosed by the taxpayer's annual return required to be filed by Article 4, ~~the amount of such overpayment~~ shall be refunded to the ~~taxpayer;~~ taxpayer subject to the following exceptions:

(1) The taxpayer may elect to apply the overpayment to another purpose as provided in Article 9 of this Chapter.

(2) If the amount of the overpayment is less than one dollar ($1.00), it will be refunded only upon the taxpayer's written demand for a refund.

(3) There will be no refund of any part of the overpayment set off under the Setoff Debt Collection Act, Chapter 105A.

~~except that overpayments of less than one dollar ($1.00) shall be refunded only upon receipt by the Secretary of a written demand for such refund from the taxpayer and except that there shall be no refund to the taxpayer of any sum set-off under the provisions of Chapter 105A, the Set-off Debt Collection Act.~~ Every refund authorized by this section shall be made as expeditiously as ~~possible,~~ possible after the taxpayer files the final return, and within six months ~~from~~ after the date on which the ~~annual~~ final return is filed or due to be filed, whichever is later, insofar as practical. ~~the same is practicable; except that no refunds for overpayment of estimated tax shall be made by the Secretary prior to the date on which the final return is filed by the taxpayer.~~ No interest shall be paid with respect to any ~~such refund if the refund is made within the six months' period above referred to.~~ refund made within this six-month period. Refunds made after the end of the six-month period shall bear interest ~~Interest~~ computed at the rate established in G.S. 105-241.1(i) for assessments ~~shall be paid on refunds made after the expiration of said six months' period, such interest to be computed from the time of the expiration of said six months'~~ from the end of the six-month period until paid. It ~~shall not be~~ is not necessary for the Attorney General ~~or any member of his staff to approve such refund,~~ to approve the refund. The making of ~~such~~ the refund does not absolve any taxpayer of any income tax liability which may in fact exist and the Secretary may make any assessment for any deficiency in the manner provided in Article 9 of this Chapter. No overpayment of tax by the taxpayer shall be refunded irrespective of whether upon discovery or receipt of written demand if ~~such~~ the discovery is not made or ~~such~~ the demand is not

received within three years from the date set by the statute for the filing of the annual return by the taxpayer or within six months of the payment of the tax alleged to be an overpayment, whichever date is the later.

~~(d) When a husband and wife have elected under G.S. 105-152.1 to file a joint return and a refund for overpayment of tax is made payable to both spouses as provided in that subsection, the provisions of this section shall apply to the refund.~~

~~(e) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the Wildlife Fund for the support of wildlife management and protection programs primarily for nongame wildlife species and wildlife species which are or may hereafter be designated as endangered or threatened. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. All of the contributions made pursuant to this subsection shall be transmitted to the State Treasurer for credit to the Wildlife Fund which shall be made available to the Wildlife Resources Commission for the support of management and protection programs primarily for nongame wildlife and endangered and threatened species and to match federal funds which may become available for these purposes.~~

~~(f) Any taxpayer who is entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of the refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make the election. The election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the the contributions made pursuant to this subsection to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund.~~"

Sec. 23. G.S. 113A-39 reads as rewritten:

"*§ 113A-39. Claim and allowance of charitable deduction for contribution or gift of easement.*

The contribution or donation of a 'scenic easement,' right-of-way or any other easement or interest in land to the State of North Carolina, as provided in this Article, shall be deemed a contribution to the State of North Carolina within the provisions of G.S. 105-130.9 and ~~105-147(16).~~ section 170(c)(1) of the Internal Revenue Code. The value of the contribution or donation shall be the fair market value of

the easement or other interest in land when the contribution or donation is made."

Sec. 24. G.S. 131C-5 reads as rewritten:

"§ *131C-5. Exemptions.*

(a) Any person who solicits charitable contributions for a religious purpose or on behalf of a person established for a religious purpose shall not be required to apply for a license.

(b) Solicitation of charitable contributions by the federal, State or local government, or any agency thereof, shall not be subject to this ~~Article [Chapter].~~ Chapter. For purposes of this subsection any volunteer fire department or rescue squad which receives any funds from federal, State, or local government shall be considered an agency thereof.

(c) Any person who receives less than ten thousand dollars ($10,000) in contributions in any calendar year and does not provide compensation to any officer, trustee, organizer, incorporator, fund-raiser or professional solicitor shall not be required to apply for a license.

(d) Any educational institution, the curriculum of which in whole or in part, is registered, approved or accredited by the Southern Association of Colleges and Schools or an equivalent regional accrediting body; any educational institution in compliance with Article 39 of Chapter 115C of the General Statutes; and any foundation or department having an established identity with any of the aforementioned educational institutions shall not be required to apply for a license.

(e) Any hospital licensed pursuant to ~~Article 13A of Chapter 131~~ Article 5 of Chapter 131E of the General Statutes and any foundation or department having an established identity with the aforementioned hospital shall not be required to apply for a license; Provided, however, that the governing board of the hospital authorizes the solicitation and receives an accounting of the funds collected and expended.

(f) Any noncommercial radio or television station shall not be required to apply for a license.

(g) ~~Any public supported community foundation or public supported community trust as defined by G.S. 105-147(16) shall not be~~ A qualified community trust as provided in 26 C.F.R. § 1.170A-9(e)(10) through (e)(14) is not required to apply for a license."

Sec. 25. G.S. 143-283.7 is repealed.

Sec. 26. G.S. 105-241.4 reads as rewritten:

"§ *105-241.4. Action to recover tax paid.*

Within 30 days after notification of the Secretary's decision with respect to liability under this Subchapter or ~~under Article 36 of~~

Subchapter V, any taxpayer aggrieved thereby, in lieu of petitioning for administrative review thereof by the Tax Review Board under G.S. 105-241.2, may pay the tax and bring a civil action for its recovery as provided in G.S. 105-267.

Any taxpayer who has obtained an administrative review by the Tax Review Board as provided by G.S. 105-241.2 and who is aggrieved by the decision of the ~~said~~ Board may, in lieu of appealing pursuant to the provisions of G.S. 105-241.3, within 30 days after notification of the Board's decision with respect to liability pay the tax and bring a civil action for its recovery as provided in G.S. 105-267.

Either party may appeal to the appellate division from the judgment of the superior court under the rules and regulations prescribed by law for appeals, except that if the ~~Secretary, if he should appeal, shall not be~~ Secretary appeals, the Secretary is not required to give any undertaking or make any deposit to secure the cost of ~~such~~ the appeal.

Any taxes, interest or penalties paid and found by the court to be in excess of those which can be properly assessed shall be ordered refunded to the taxpayer with interest from time of payment."

Sec. 27. G.S. 105-236(12) is repealed.

Sec. 28. G.S. 105-262 reads as rewritten:

"§ *105-262. Rules and regulations.*

The Secretary of Revenue ~~shall, from time to time, initiate and prepare such regulations, not inconsistent with law, as may be useful and necessary to implement the provisions of all the Articles of Subchapter I (except Article 8B) and Article 36 of Subchapter V, such regulations to become effective when approved by the Tax Review Board.~~ may adopt regulations needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. A regulation becomes effective when it is approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue.

The Secretary of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.

References to rules and regulations of the Secretary of Revenue in this Chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section."

Sec. 29. G.S. 105-264 reads as rewritten:

"§ *105-264. ~~Construction of Subchapter; population.~~ Effect of interpretation, regulation, or ruling.*

It shall be the duty of the Secretary of Revenue to construe all sections of this Subchapter ~~(except Article 8B)~~ that are administered by the Secretary and all sections of ~~Article 36 of~~ Subchapter ~~V; provided, such construction shall not be inconsistent with applicable regulations duly promulgated under the provisions of G.S. 105-262; provided further, nothing in this section shall be construed to prohibit the Secretary of Revenue from initiating and proposing regulations, as provided in G.S. 105-262, modifying, changing, altering or repealing existing regulations. Such decisions~~ V. The Secretary's interpretation of these sections shall be consistent with the applicable regulations. Interpretations by the Secretary of Revenue shall be prima facie correct, and a protection to the officers and taxpayers affected thereby. ~~Where the license tax is graduated in this Subchapter according to the population, the population shall be the number of inhabitants as determined by the last census of the United States government; Provided, that if any city or town in this State has extended its limits since the last census period, and hereafter has taken a census of its population in these increased limits by an official enumeration, either through the aid of the United States government or otherwise, the population thus ascertained shall be that upon which the license tax is to be graduated.~~

Whenever the Secretary of Revenue shall construe any provisions of the revenue laws administered by him and shall issue or publish to taxpayers in writing any regulation or ruling so construing the effect or operation of any such laws, such ruling or regulation shall be a protection to the officers and taxpayers affected thereby and taxpayers shall be entitled to rely upon such regulation or ruling. In the event the Secretary of Revenue shall change, modify, repeal, abrogate, or alter any such regulation or ruling any taxpayer who has relied upon the construction or interpretation contained in the Secretary's previous ruling or regulation shall not be liable for any additional assessment on account of any tax not paid by reason of reliance upon such ruling or regulation and which might have accrued prior to the date of the change, modification, repeal, abrogation, or alteration by the Secretary, and during the effective period of such prior ruling or regulation. Provided, that nothing herein contained shall prevent any such change in construction or interpretation of the provisions of this Chapter by the Secretary of Revenue from being effective from and after the date of its issuance or promulgation, or the assessment of any tax thereunder."

Sec. 30. G.S. 105-267.1 is repealed.

Sec. 31. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of April, 1991.

H.B. 10 **CHAPTER 46**

AN ACT TO ALLOW LESSORS AND RENTERS OF MOTOR VEHICLES TO ELECT TO PAY HIGHWAY USE TAX ON MOTOR VEHICLES OWNED ON OCTOBER 1, 1989, AND TO CLARIFY THAT THESE MOTOR VEHICLES ARE OTHERWISE SUBJECT TO THE GROSS RECEIPTS TAX.

The General Assembly of North Carolina enacts:

Section 1. Article 5A of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-187.11. Transition from sales tax to highway use tax for lessors and renters of motor vehicles.*

A tax at the rate set in G.S. 105-187.5(b) is levied on the gross receipts derived by a retailer from the lease or rental of a motor vehicle owned by the retailer before October 1, 1989, and leased or rented on or after that date. A retailer subject to this tax may elect to pay highway use tax at the rate set in G.S. 105-187.3(a) on a motor vehicle owned by the retailer before October 1, 1989, and leased or rented on or after that date. The retail value of a motor vehicle for which a retailer makes an election under this section is the value of the motor vehicle that would apply under G.S. 105-187.3(b) if the retailer received the vehicle because of a reason other than the sale of the motor vehicle on the date the retailer makes the election.

To make the election allowed by this section, a retailer shall complete a form provided by the Division, pay the tax due, and pay the fee set in G.S. 20-85(a)(9). A retailer who makes this election may not receive credit for any tax paid on the motor vehicle under Article 5 of this Chapter or for any tax on gross receipts paid under this Article. The Division shall notify the Secretary of Revenue of a retailer who makes an election under this section. Notwithstanding G.S. 105-187.9, the taxes collected under this section shall be credited to the General Fund."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

H.B. 84 **CHAPTER 47**

AN ACT TO REPEAL THE SUNSET ON LEGISLATION AUTHORIZING CURRITUCK COUNTY TO LEVY AN EXCISE TAX ON INSTRUMENTS CONVEYING REAL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Section 1(j) of Chapter 670 of the 1985 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

H.B. 119 **CHAPTER 48**

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF PINEVILLE.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Pineville are extended to include the following described property:

TRACT 1 (tax parcel #205-094-08):

BEGINNING at an iron stake, the northwesterly corner of the property conveyed to Riegel Paper Corporation from Southland Industrial Park, Inc., by Deed dated October 16, 1967, recorded in Book 2895 at page 381 in the Mecklenburg Registry, and runs thence from said Beginning point along the southwesterly margin of the right of way for Industrial Boulevard (said right of way being 60 feet in width) South 64-00 East 495.74 feet to a point; thence three new lines as follow:

(1) South 26-00 West 263.00 feet to a point; thence (2) South 64-00 East 70.50 feet to a point; thence (3) South 26-00 West 609.64 feet to a point in the southerly line of the property of Riegel Paper Corporation, as aforesaid; thence North 80-15-10 West 589.81 feet to an iron stake; thence North 26-00 East 1037.71 feet to the point or place of BEGINNING; containing 11.990 acres and being a part of the property conveyed to Riegel Paper Corporation from Southland Industrial Park, Inc., as aforesaid.

BEGINNING at the southeasterly corner of the property conveyed to Techbuilt, Inc., from Riegel Paper Corporation by Deed dated April 8, 1971, recorded in Book 3279 at page 111 in the Mecklenburg County Registry, and running thence along the southerly line of the property of Riegel Paper Corporation as described in that certain Deed from Southland Industrial Park, Inc., dated October 16, 1967, and recorded in Book 2895 at page 381 in the Mecklenburg Registry South 80-15-10 East 956.21 feet to a nail located in the center of the right of way of the Southern Railway Company main line, running from Charlotte, N. C. to Columbia, S. C.; thence along the center of the right of way of said Southern Railway Company line North 26-00 East 605 feet to a nail; thence in a southwesterly and westerly direction parallel to and 10 feet to the south of the center line of an

existing railway spur track (which spur track extends in a southerly and southwesterly direction from the aforesaid Southern Railway Company main line), if extended, to a point in the easterly margin of the aforesaid property conveyed to Techbuilt, Inc., by Deed recorded in Book 3279 at page 111 in the Mecklenburg Registry; thence with said line of the property of Techbuilt, Inc., South 26-00 West 153 feet, more or less, to the point or place of BEGINNING; being part of the property conveyed to Riegel Paper Corporation from Southland Industrial Park, Inc., as aforesaid.

TRACT 2 (tax parcel #205-094-16):

BEGINNING at a new iron pin, being also the southwesterly corner of the Peachtree Investment Corporation property (now or formerly) as described in Deed Book 3605, page 036, recorded in the Mecklenburg County, North Carolina, Public Registry; thence from said beginning point with the southerly boundary of said Peachtree Investment Corporation property (now or formerly), S. 67-53-00 E. 132.21 feet to a new iron pin, being also the northerly corner of the Snap-On Tools Corporation property (now or formerly) as described in Deed Book 3605, page 462, in the aforesaid Registry; thence with the westerly boundary of said Snap-On Tools Corporation property (now or formerly), S. 22-07-00 W. 146.0 to a new iron pin, being also the westerly corner of said Snap-On Tools Corporation property (now or formerly); thence with the southerly boundary of said Snap-On Tools Corporation property (now or formerly), S. 67-53-00 E. 298.36 feet to a point in the centerline of the 60-foot right of way of Industrial Drive, passing an existing iron pin at the westerly margin of said 60-foot right of way at 268.36 feet; thence with the centerline of Industrial Drive, S. 22-07-00 W. 110.0 feet to a point; thence N. 67-53-00 W. 430.57 feet to a new iron pin, passing a new iron pin in the westerly margin of the 60-foot right of way of Industrial Drive at 30.0 feet; thence N. 22-07-00 E. 256.0 feet to the point and place of Beginning, containing 1.530 acres, all as shown on a boundary survey of a portion of Southland Industrial Park, Inc., dated July 10, 1987, by Jack R. Christian & Associates.

TRACT 3 (tax parcel #205-095-01):

BEGINNING at an old nail in the center of the right-of-way margin of Industrial Drive, the northeasterly corner of the property of Tarheel Container [(now or formerly) as conveyed by deed recorded in Book 4397, Page 168 of the Mecklenburg County Public Registry]; thence proceeding with the center of the right-of-way margin of Industrial Drive North 22-07 East 456.79 feet to an old nail in the northwesterly corner of the property of Eslon Plastics [(now or formerly) as conveyed by deed recorded in Book 4254, Page 925 of the Mecklenburg County Public Registry]; thence with the line of Eslon

Plastics (now or formerly) South 63-48-46 East 826.12 feet to a stake; thence South 26-08-42 West 455.69 feet to a stake to the northeasterly corner of the property of Tarheel Container (now or formerly); thence with the line of Tarheel Container North 63-48-46 West 794.03 feet to an old nail, the point and place of BEGINNING. Containing 8.474 acres according to that certain plat of survey dated January 18, 1984 prepared by Spratt-Seaver, Inc., Engineering and Surveying.

TRACT 4 (tax parcel #205-095-04):

BEGINNING at a nail in the center line of Industrial Drive (Industrial Drive having a right-of-way 60 feet in width), said beginning point being located three (3) calls from the intersection of the center line of Industrial Drive and the center line of the Southern Railroad spur track running westerly from the Southern Railroad main line as follows: (1) with the center line of Industrial Drive S 66-15-00 W 216.03 feet to a point; (2) with the center line of Industrial Drive along the arc of a circular curve to the left having a radius of 468.51 feet, an arc distance of 99.62 feet; (3) with the center line of Industrial Drive S 54-04-00 W 65.75 feet to a nail, the point or place of Beginning; and running thence from said Beginning point two (2) calls with the tract of BHF Investments, Inc. (now or formerly) conveyed by the deed recorded in Book 4101 at page 184 of the Mecklenburg County, North Carolina, Public Registry as follows: (1) S 35-56-00 E 244.52 feet to an iron; (2) S 63-48-30 E 359.03 feet to an old iron on the line of the tract of Eslon Thermoplastics, Inc., conveyed by deeds recorded in Book 4022 at page 368 and at page 384 of the aforesaid Public Registry, the southeasterly corner of the aforesaid BHF Investments, Inc. tract; thence with the line of said Eslon Thermoplastics, Inc. S 26-11-30 W 586.03 feet to an old iron; thence a new line with the tract of Southland Industrial Park, Inc., conveyed by deed recorded in Book 2358 at page 296 in the aforesaid Public Registry N 63-48-30 W 826.50 feet to a nail in the center line of said Industrial Drive; thence with the center line of Industrial Drive three (3) calls as follows: (1) N 22-07-00 E 98.97 feet to a point; (2) with the arc of a circular curve to the right having a radius of 349.32 feet, an arc distance of 194.79 feet to a point; (3) N 54-04-00 E 467.77 feet to the point or place of BEGINNING, and containing 10.707 acres, more or less, as shown on that certain boundary survey dated July 27, 1979, by Henry L. Parnell, Registered Surveyor.

TRACT 5 (tax parcel #207-081-09):

Lying and being in Pineville Township, Mecklenburg County, North Carolina, and beginning at an iron pipe located in the southeasterly margin of the right of way of Pineville Road (U.S. Highway 521), said iron pipe marking the northwesterly corner of the tract of land described in the deed recorded in Book 5030 at page 501

in the Mecklenburg County Registry, said iron pipe marking a corner of the property, now or formerly, of Sharon Mini Storage, a partnership, and running thence with the line of the property, now or formerly, of Sharon Mini Storage two calls and distances as follows: (1) South 61 degrees 34 minutes 4 seconds East (passing an iron at 272.62 feet) 302.84 feet to a point and (2) South 28 degrees 24 minutes 20 seconds West 149.51 feet to a point in the line of the property, now or formerly, of E.F.C. Corp.; thence with the line of the property, now or formerly, of E.F.C. Corp North 61 degrees 35 minutes 40 seconds West 294.39 feet to an iron pipe located in the southeasterly margin of the right of way of Pineville Road; thence with the southeasterly margin of the right of way of Pineville Road North 25 degrees 10 minutes 17 seconds East 149.88 feet to the point and place of beginning. Said parcel of land is shown on the plat of survey by Keith R. Moen, North Carolina Registered Land Surveyor, dated May 9, 1985.

TRACT 6 (tax parcel #205-094-14):

BEGINNING at an iron stake located in the southerly line of the Rexham Corporation as shown and described in that certain deed recorded in book 3838, page 651 of the Mecklenburg County, North Carolina, Public Registry, said iron stake being also located N. 80-15-10 W. 1,483.52 feet distant from the center line of the Southern Railway (now or formerly) main line and running thence from said iron stake N. 80-15-10 W. 62.50 feet to an iron stake located in a corner of John S. Miller and Rexham Corporation; thence N. 26-00-00 E. 1,037.71 feet to an iron stake located in the southerly edge or margin of Industrial Drive; thence S. 64-00-00 E. 60 feet with the southerly edge or margin of Industrial Drive to an iron stake; thence S. 26-00-00 W. 1,020.22 feet to the point or place of the Beginning, containing 1.417 acres more or less. Reference is hereby made to that certain plat or map of P.A. Brotherton, Registered Surveyor, dated December 14, 1984.

Being part of the property conveyed to Rexham Corporation by that certain deed recorded in Book 3828, page 651 of the Mecklenburg County, Public Registry.

Being the same property conveyed to Anne S. Miller by that certain deed recorded in Book 4951, page 276 of the Mecklenburg County, Public Registry.

TRACT 7 (tax parcels #205-092-11 and 205-092-14)

BEGINNING at a point located in the center line of Old Pineville Road where the same intersects with the center line of Rodney Street and runs thence with said Old Pineville Road South 29-56-30 East 625.19 feet to a tack located in the center of the track of the Southern Railway Company main line running from Charlotte, North Carolina,

to Columbia, South Carolina; thence with the center line of said track South 24-31 West 63.40 feet to a tack; thence continuing with said center line of said track south 25-34 West 132.17 feet to a tack; thence continuing with the center line of said track South 26 West 1,065.10 feet to an old spike; thence North 10-20-30 East 97.08 feet to a tack in the center line of the spur track leading from said Southern Railway main line track to Southland Industrial Park; thence with the center line of said spur track on a curve to the left, said curve being a portion of a circle having a radius of 1,146.28 feet and an arc of 900.50 feet, to an old tack in the center line of Rodney Street; thence with the center line of Rodney Street North 26-00 East 792.30 feet to the point and place of BEGINNING, as shown on the Plat of the property of Guardian Investment Company by Henry L. Parnell, R.S., dated July 22, 1969.

Being the same property which was conveyed to Guardian Investment Company by deed of Southland Industrial Park, Inc., dated November 15 1967, and recorded in the Mecklenburg County Public Registry in Book 2917, Page 9, as corrected by correction deed dated August 11, 1969, and recorded in said Registry in Book 3126, Page 21.

TRACT 8 (tax parcel #205-094-15):

BEGINNING at a point in the center of Industrial Drive, said point also being the northwest corner of the Harold F. Griffith's property, now or formerly, as found in Deed Book 3667, at Page 0428, of the Mecklenburg County, North Carolina Public Registry, and running thence with the center of Industrial Drive, S. 64-00-00 E. 190.44 feet to a point, said point being the corner of the Ann S. Miller property, now or formerly, as found in Deed Book 4951 at Page 0276, of the Mecklenburg County Public Registry; thence with the Ann S. Miller line, now or formerly, S. 26-00 W. 457.46 feet to a point; thence a new line N. 64-00 W. 190.44 feet to a point on the Harold F. Griffith's line, now or formerly, as per Deed Book set forth above; thence with the Harold F. Griffith's property, now or formerly, N. 26-00 E. 457.46 feet to the point and place of BEGINNING, containing approximately 2.0 acres, said property being a portion of that property shown on the survey of Henry L. Parnell, dated September 12, 1985.

TRACT 9 (tax parcel #207-081-10):

BEGINNING at a point in Pineville Road, which beginning point is N. 24-02-10 E. 150.0 feet from another point in Pineville Road (which latter point is the southwesternmost corner of the property described as "3rd Tract" in that certain deed dated May 29, 1959, from John S. Miller to John S. Miller and wife, Lillian Crow Miller, recorded in Book 2075, at page 143, in the Mecklenburg County Registry; and which latter point also is N. 61-35-40 W. 15.65 feet

from an old iron pipe in the easterly margin of the right-of-way of Pineville Road, in the common boundary line of E.F.C. Corp., now or formerly, described in deed recorded in Book 3401, at page 507, in the Mecklenburg County Registry); running thence with a line in Pineville Road N. 24-02-10 E. 252.65 feet to a point in Pineville Road; running thence S. 61-35-40 E. 23.17 feet to an iron in the easterly margin of the right-of-way of Pineville road; running thence S. 61-35-40 E. 703.82 feet to an iron in the line of the property of Edgar H. Hand Heirs, now or formerly; running thence with a common boundary line of the aforementioned Hand Heirs property S. 15-00-00 W. 412.72 feet to an old iron pipe, being the southeasternmost corner of the aforementioned "3rd Tract", a common corner with the aforementioned E.F.C. Corp. property (such old iron pipe being located S. 15-00-00 W. 66.55 feet from another old iron pipe, in the aforementioned line of the Hand Heirs property); running thence with the common boundary line of the aforementioned E.F.C. Corp. property N. 61-35-40 W. 500.25 feet to an iron in the line of the aforementioned E.F.C. Corp. property; running thence N. 24-02-10 E. 150.0 feet to an iron; running thence N. 61-35-40 W. 272.78 feet to an iron in the easterly margin of the right-of-way of Pineville Road; running thence N. 61-35-40 W. 18.47 feet to a point in Pineville Road, being the point or place of BEGINNING, and containing approximately 6.0 acres, as shown on that certain Boundary Survey for Stephen E. Benson, prepared by Hyatt, Lanford, Seaver, and Associates (Maurice B. Seaver, N.C.R.L.S. number L594), dated September 8, 1982.

TRACT 10:

Being all of the property shown as 1.07 acres and identified as tax parcel number 205-094-05 and all of the property shown as 1.72 acres and identified as tax parcel number 205-094-13 and all the property shown as 3.2 acres and identified as tax parcel #205-094-19 and all of the property shown as 2.0 acres and identified as tax parcel #205-094-18 and all of that property shown as 4.4 aces and identified as tax parcel #205-094-01 in the 1990 Tax Map Book 205 at Page 9 in the Mecklenburg County Tax Office. Revised on 11-23-90.

TRACT 11: (tax parcel #205-094-17):

BEGINNING at an existing iron pin located in the northerly margin of Industrial Drive at the common front corner of the property being conveyed hereby by Grantor and the property of Rousseldt Gelatin Corp. as described in Deed Book 3894, page 547 of the Mecklenburg County Public Registry, said beginning point being also located in an easterly direction 434.70 feet along the northerly margin of Industrial Drive from the intersection of said northerly margin of Industrial Drive with the center line of the right-of-way of Southern Railway,

and runs thence from said point and place of beginning and with the line of Rousseldt Gelatin Corp. N. 23-46-00 W. 399.21 feet to an existing iron pin in the line of the property of E. H. Hand, Jr. as described in Deed Book 4690, Page 315 of the Mecklenburg County Public Registry; thence with the line of E. H. Hand, Jr. N. 66-14-00 E. 200.0 feet to a new iron pin; thence a new line S. 23-46-00 E. 399.21 feet to a new iron pin located in the northerly margin of Industrial Drive; thence with the northerly margin of Industrial Drive S. 66-14-00 W. 200.0 feet to the point and place of BEGINNING, the same containing 1.8329 acres as shown on a boundary survey prepared for Godley Builders dated October 12, 1987 prepared by Maurice B. Seaver, N.C.R.L.S.

The above-described property being in all respects that 1.8329 acre tract of land shown as Tract B on a map of the revised section of Southland Industrial Park recorded in Map Book 22 at Page 382 in the Office of the Register of Deeds for Mecklenburg County, North Carolina.

TRACT 12:

Being all portions of the rights-of-way identified as Industrial Drive, Rodney Street and U.S. Highway 521 which lie adjacent to the above-referenced tracts shown in the 1990 Tax Map Book 205 at Page 209 as revised on November 23, 1990 in the Mecklenburg County Tax Office.

Sec. 2. This act becomes effective June 30, 1991.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

H.B. 185 **CHAPTER 49**

AN ACT TO MODIFY THE SCOPE OF THE GASTON COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 1(a) of Chapter 618 of the 1987 Session Laws reads as rewritten:

"(a) Authorization and scope. The Gaston County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of no more than three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3).~~ 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to

accommodations furnished by nonprofit charitable, educational, or religious organizations. ~~organizations or to accommodations furnished by any hotel, motel, inn, or similar place that offers to rent fewer than twenty-seven rooms or units.~~"

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

H.B. 365 **CHAPTER 50**

AN ACT TO PROVIDE FOR PAYMENT OF BENEFITS UNDER THE REGISTERS OF DEEDS' SUPPLEMENTAL PENSION FUND ON THE SAME DAY AS OTHER RETIREMENT BENEFITS ARE PAID.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-50.5(b) reads as rewritten:

"(b) All monthly pensions payable under this Article shall be paid on the ~~last business day of each month.~~ same business day of each month that benefits are paid from the Local Governmental Employees' Retirement System."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

H.B. 368 **CHAPTER 51**

AN ACT TO CLARIFY THE DEFINITION OF "COMPENSATION" AS USED IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND THE TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-21(7a) reads as rewritten:

"(7a) 'Compensation' shall mean all salaries and ~~wages,~~ wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee in the unit of the Retirement System for which he is performing full-time work. 'Compensation' shall not include any payment, as determined by the Board of

Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages."

Sec. 2. G.S. 135-1(7a) reads as rewritten:

"(7a) 'Compensation' shall mean all salaries and ~~wages,~~ wages prior to any reduction pursuant to sections 125, 401(k), 403(b), 414(h)(2), and 457 of the Internal Revenue Code, not including any terminal payments for unused sick leave, derived from public funds which are earned by a member of the Retirement System for service as an employee or teacher in the unit of the Retirement System for which he is performing full-time work. 'Compensation' shall not include any payment, as determined by the Board of Trustees, for the reimbursement of expenses or payments for housing or any other allowances whether or not classified as salary and wages."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of April, 1991.

S.B. 166 **CHAPTER 52**

AN ACT TO REQUIRE THE DEPARTMENT OF HUMAN RESOURCES, DIVISION OF AGING, TO CHARGE FEES FOR IN-HOME AND COMMUNITY-BASED SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.1(a) is amended by adding a new subdivision to read:

"(10) To establish a fee schedule to cover the cost of providing in-home and community-based services funded by the Division. The fees may vary on the basis of the type of service provided and the ability of the recipient to pay for the service. The fees may be imposed on the recipient of a service unless prohibited by federal law. The local agency shall retain the fee and use it to extend the availability of in-home and community-based services provided by the Division in support of functionally impaired older adults and family caregivers of functionally impaired older adults."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 25th day of April, 1991.

S.B. 209 **CHAPTER 53**

AN ACT TO CLARIFY THE ISSUANCE OF FICTITIOUS DRIVERS LICENSES AND REGISTRATION PLATES AND TO CREATE A CONFIDENTIAL REGISTRATION FILE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-39(h) reads as rewritten:

"(h) The Commissioner, notwithstanding any other provision of this Chapter, may lawfully and to the extent necessary, provide local, State or federal law-enforcement officers on special undercover assignments with motor vehicle ~~operator's~~ drivers licenses and motor vehicle registration plates under assumed names using false or fictitious addresses. Such registration plates shall only be used on publicly owned or leased vehicles. Requests for these licenses and registration plates shall be made to the Commissioner by the head of the local, State or federal law-enforcement agency and ~~approved~~ be accompanied by approval in writing ~~by~~ from the Director of the State Bureau of Investigation upon a specific finding by the Director that the request is justified and necessary. The Director shall keep a record of all such licenses, registration plates, assumed names, false or fictitious addresses, and law-enforcement officers using the licenses or registration plates, and shall request the immediate return of any license or registration plate that is no longer necessary. Licenses and registration plates provided under this subsection shall expire six months after initial issuance or subsequent validation after the request for extension has been approved in writing by the Director of the State Bureau of Investigation. The head of the local, State or federal law-enforcement agency shall be responsible for the use of the licenses and registration plates and shall return them immediately to the Commissioner for cancellation upon either (i) their expiration, (ii) request of the Director of the State Bureau of Investigation, or (iii) request of the Commissioner. Failure to return a license or registration plates issued pursuant to this subsection shall be punished as a general misdemeanor. At no time shall the number of valid licenses and registration plates issued under this act exceed one hundred, and those issued shall be strictly monitored by the Director. All of the private registration plates issued to special agents of the State Bureau of Investigation under the Department of Justice and to alcohol law enforcement agents under the Department of Crime Control and Public Safety, pursuant to G.S. 14-250, may be fictitious plates and shall not be counted in the total number of fictitious plates authorized by this subsection."

Sec. 2. G.S. 20-56 reads as rewritten:

"§ *20-56. Registration indexes.*

(a) The Division shall file each application received, and when satisfied as to the genuineness and regularity thereof, and that the applicant is entitled to register such vehicle and to the issuance of a certificate of title, shall register the vehicle therein described and keep a record thereof as follows:

(1) Under a distinctive registration number assigned to the vehicle;

(2) Alphabetically, under the name of the owner;

(3) Under the motor number or any other identifying number of the vehicle; and

(4) In the discretion of the Division, in any other manner it may deem advisable.

(b) The Division shall maintain a separate registration file for vehicles bearing private tags which are owned or leased for use by individuals in the following categories:

(1) Members of federal, State, and local law enforcement agencies if the vehicles are used for the purpose of transporting, apprehending, or arresting persons charged with violations of the laws of the United States or the State of North Carolina;

(2) Agents for the Internal Revenue Service;

(3) Public officials.

Individuals in the aforementioned categories must provide satisfactory evidence to the Commissioner that their personal safety is at risk. This file shall be confidential for the use of the Division."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of April, 1991.

H.B. 208 **CHAPTER 54**

AN ACT TO ALLOW THE PAROLE COMMISSION TO REQUIRE PAROLEES TO CONTINUE PURSUING GENERAL EDUCATION DEVELOPMENT DEGREES AS A CONDITION OF PAROLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1374(b) reads as rewritten:

"(b) Appropriate Conditions. -- As conditions of parole, the Commission may require that the parolee comply with one or more of the following conditions:

(1) Work faithfully at suitable employment or faithfully pursue a course of study or vocational training that will equip him for suitable employment.

(2) Undergo available medical or psychiatric treatment and remain in a specified institution if required for that purpose.

(3) Attend or reside in a facility providing rehabilitation, instruction, recreation, or residence for persons on parole.

(4) Support his dependents and meet other family responsibilities.

(5) Refrain from possessing a firearm, destructive device, or other dangerous weapon unless granted written permission by the Commission or the parole officer.

(6) Report to a parole officer at reasonable times and in a reasonable manner, as directed by the Commission or the parole officer.

(7) Permit the parole officer to visit him at reasonable times at his home or elsewhere.

(8) Remain within the geographic limits fixed by the Commission unless granted written permission to leave by the Commission or the parole officer.

(9) Answer all reasonable inquiries by the parole officer and obtain prior approval from the parole officer for any change in address or employment.

(10) Promptly notify the parole officer of any change in address or employment.

(11) Submit at reasonable times to searches of his person by a parole officer for purposes reasonably related to his parole supervision. The Commission may not require as a condition of parole that the parolee submit to any other searches that would otherwise be unlawful.

(11a) Make restitution or reparation to an aggrieved party as provided in G.S. 148-57.1.

(11b) Comply with an order from a court of competent jurisdiction regarding the payment of an obligation of the parolee in connection with any judgment rendered by the court.

(11c) In the case of a parolee who was attending a basic skills program during incarceration, continue attending a basic skills program in pursuit of a General Education Development Degree or adult high school diploma.

(12) Satisfy other conditions reasonably related to his rehabilitation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of April, 1991.

H.B. 273 **CHAPTER 55**

AN ACT TO INCREASE THE PENALTIES FOR VIOLATION OF HENDERSON COUNTY'S OCCUPANCY TAX LAW.

The General Assembly of North Carolina enacts:

Section 1. Section 5(d) of Chapter 172 of the 1987 Session Laws reads as rewritten:

"(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay ~~a penalty of ten dollars ($10.00)~~ an additional tax, as a penalty, of one percent (1%) of the tax due for each day's ~~omission.~~ omission up to 30 days, with a minimum penalty of twenty-five dollars ($25.00). In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of ~~five percent (5%) of the tax~~ ten percent (10%) of the tax and penalty due in addition to any other penalty, with an additional tax of ~~five percent (5%)~~ ten percent (10%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax or penalty imposed under this act or who willfully fails to pay the tax or penalty or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. ~~The board of commissioners may, for good cause shown, compromise or forgive the penalties imposed by this subsection.~~"

Sec. 2. This act becomes effective October 1, 1991, and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 25th day of April, 1991.

S.B. 87 **CHAPTER 56**

AN ACT TO AUTHORIZE THE GOVERNOR TO APPOINT A "COMPOSER-LAUREATE FOR THE STATE OF NORTH CAROLINA."

Whereas, music has had an important place in North Carolina culture; and

Whereas, this State has produced many composers of music of lasting value; and

Whereas, there is a need to recognize the contributions of these composers; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The Governor of North Carolina may appoint a distinguished living composer as "Composer-Laureate for the State of North Carolina."

Sec. 2. Any person appointed "Composer-Laureate for the State of North Carolina" shall be appointed for life but may voluntarily resign at any time.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified

H.B. 95 **CHAPTER 57**

AN ACT TO AMEND CHAPTER 1079 OF THE 1984 SESSION LAWS TO AUTHORIZE CUMBERLAND COUNTY TO SELL INDUSTRIAL SITES IN ITS INDUSTRIAL PARK.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 1079 of the 1984 Session Laws reads as rewritten:

"Section 1. The County of Cumberland is authorized to sell industrial sites in its industrial park known as the Cumberland Industrial Center to industrial prospects, subject to its restrictive covenants as appear of record, without utilizing the formal bid requirements of Article 12 of Chapter 160A of the ~~North Carolina~~ General Statutes. Sales conducted hereunder shall be accomplished in the following manner:

(a) The County Manager of Cumberland County may, under a continuing resolution adopted by the Cumberland County Board of Commissioners, offer for sale and negotiate the terms of sale for any and all industrial sites located within the Cumberland Industrial Center. This resolution must be adopted at an open meeting of the County Board of Commissioners once each year and shall designate any and all sites that are for sale and attach any additional terms and conditions for the sale of said land.

(b) At any time that the County Manager receives a written offer to purchase a site within the Cumberland Industrial Center the County Board of Commissioners, at any special or regular meeting, may agree

to sell said property pursuant to the written offer without further notification or sales procedure. Prior to accepting such offer the County Board of Commissioners shall determine the fair market value of the property, subject to whatever covenants, conditions, and restrictions the Board proposes to subject it to and the consideration for the conveyance may not be less than the value so determined. In arriving at the amount of consideration that it receives, the Board may take into account prospective tax revenues from improvements to be constructed on the property, prospective sales tax revenues to be generated in the area, as well as any other prospective tax revenues or income coming to the County over the next 10 years as a result of the conveyance or lease provided the following conditions are met:

(1) The County Board of Commissioners shall determine that the conveyance of the property will stimulate the local economy, promote business, and result in the creation of a substantial number of jobs in the County.

(2) The County Board of Commissioners shall contractually bind the purchaser of the property to construct improvements on the property within a specified period of time, not to exceed 10 years, which improvements are sufficient to generate the tax revenue taken into account in arriving at the consideration. Upon failure to construct the improvements specified in the contract, the purchaser shall reconvey the property back to the County.

(c) Within seven days of the acceptance of such offer, the County Board of Commissioners shall publish a resolution in a local daily paper of major circulation identifying the site to be sold and briefly enumerating the terms of the sale. This resolution is for the purposes of fully notifying the residents of Cumberland County of the Commissioners' action in disposing of the industrial sites within the County, but it is not to be construed as requiring additional form of approval or action."

Sec. 2. This act is effective upon ratification. All sales consummated in accordance with Chapter 1079 of the 1984 Session Laws prior to the ratification of this act are ratified.

In the General Assembly read three times and ratified this the 29th day of April, 1991.

H.B. 113 **CHAPTER 58**

AN ACT TO ALLOW THE TOWN OF AYDEN TO DISPOSE OF CERTAIN PROPERTY BY PRIVATE NEGOTIATION AND SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 and Part 8 of Article 19 of Chapter 160A of the General Statutes, the Town of Ayden may convey by private negotiation and sale, any or all of its right, title, and interest in the following described property:

(1) Tract 1, being the property on which the building known as the "Old Municipal Building" is located, with the street address of 109 West Avenue, and as shown on Pitt County tax map number 119, block F, lot 15, parcel number 29392; and

(2) Tract 2, being a vacant lot with the street address of 200 S. East Avenue, and as shown on Pitt County tax map number 119, block E, lot 8A, 9 and 10, parcel 16415,

both tracts being shown on the re-use plan of the redevelopment plan adopted by the Ayden Board of Commissioners on May 14, 1990.

Sec. 2. The terms of any conveyance made under Section 1 of this act shall ensure that the Town of Ayden receives at least the minimum appraised value of the property conveyed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of April, 1991.

H.B. 168 **CHAPTER 59**

AN ACT TO AMEND THE HOME HEALTH AGENCY LICENSURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes reads as rewritten:

"Part C. Home ~~Health~~ Care Agency Licensure Act.

"§ *131E-135. Title; purpose.*

(a) This Part shall be known as 'Home ~~Health~~ Care Agency Licensure Act'.

(b) The purpose of this Part is to establish licensing requirements for home ~~health~~ care agencies.

"§ *131E-136. Definitions.*

As used in this Part, unless otherwise specified:

(1) 'Commission' means the North Carolina Medical Care Commission.

(2) 'Home ~~health~~ care agency' means a private or public organization which provides home ~~health~~ care services.

(3) 'Home ~~health~~ care services' means ~~health care and medical services and medical supplies~~ any of the following services

and directly related medical supplies and appliances, which are provided to an individual ~~by a home health agency or by others under arrangements with the agency, on a visiting basis,~~ in a place of temporary or permanent residence used as an individual's ~~home. The services may include but are not limited to the following:~~ home:

a. ~~Part-time or intermittent nursing~~ Nursing care provided by or under the supervision of a registered nurse;
b. Physical, ~~occupational~~ occupational, or speech ~~therapy;~~ therapy, when provided to an individual who also is receiving nursing services, or any other of these therapy services, in a place of temporary or permanent residence used as the individual's home;
c. Medical social ~~services, home health aid services, and other therapeutic services;~~ services;
d. ~~Medical supplies, other than drugs and biologicals, and the use of medical appliances.~~ In-home aide services that involve hands-on care to an individual;
e. Infusion nursing services; and
f. Assistance with pulmonary care, pulmonary rehabilitation or ventilation.

The term does not include: health promotion, preventative health and community health services provided by public health departments; maternal and child health services provided by public health departments, by employees of the Department of Environment, Health, and Natural Resources under G.S. 130A-124, or by developmental evaluation centers under contract with the Department of Environment, Health, and Natural Resources to provide services under G.S. 130A-124; hospitals licensed under Article 5 of Chapter 131E of the General Statutes when providing follow-up care initiated to patients within six months after their discharge from the hospital; facilities and programs operated under the authority of G.S. 122C and providing services within the scope of G.S. 122C; schools, when providing services pursuant to Article 9 of Chapter 115C; the practice of midwifery by a person licensed under Article 10A of Chapter 90 of the General Statutes; hospices licensed under Article 10 of Chapter 131E of the General Statutes when providing care to a hospice patient; an individual who engages solely in providing his own services to other individuals; incidental health care provided by an employee of a physician licensed to practice medicine in North Carolina in the normal course of the physician's practice; or

nursing registries if the registry discloses to a client or the client's responsible party, before providing any services, that (i) it is not a licensed home care agency, and (ii) it does not make any representations or guarantees concerning the training, supervision, or competence of the personnel provided.

(4) 'Home health agency' means a home care agency which is certified to receive Medicare and Medicaid reimbursement for providing nursing care, therapy, medical social services, and home health aide services on a part-time, intermittent basis as set out in G.S. 131E-176(12), and is thereby also subject to Article 9 of Chapter 131E.

"§ *131E-137.* ~~*Home health services*~~ *Services to be provided in all counties.*

(a) Every county shall provide ~~home health services as defined in this Part.~~ part-time, intermittent home care nursing services, and at least one of the following home care services: part-time, intermittent physical therapy, occupational therapy, speech therapy, medical social work, or home health aide services.

~~(b) For purposes of this section, home health services shall be as defined in this Part, except that these services may be provided by any organization listed in subsection (c) of this section.~~

(c) ~~Home health~~ These services ~~may~~ shall be provided by a ~~county health department, by a district health department, by a home health~~ home care agency licensed under this ~~Part, or by a public agency.~~ Part. The county may provide ~~home health~~ these services by contract with another ~~health department or with a home health agency or public agency~~ home care agency in another county.

(d) Repealed by Session Laws 1985, c. 8, s. 1, effective July 1, 1985.

"§ *131E-138. Licensure requirements.*

(a) No person or governmental unit shall operate a home ~~health~~ care agency without a license obtained from the Department. Nothing in this Part shall be construed to extend or modify the licensing of individual health professionals by the licensing boards for their professions or to create any new professional license category.

~~(b) An applicant shall provide nursing service and at least one other home health service, as stated in G.S. 131E-136(3).~~

(c) An application for a license shall be available from the Department, and each application filed with the Department shall contain all information requested by the Department. A license shall be granted to the applicant upon a determination by the Department that the applicant has complied with the provisions of this Part and the rules promulgated by the Commission under this Part.

(d) The Department shall renew the license in accordance with the rules of the Commission.

(e) Each license shall be issued only for the premises and persons named in the license and shall not be transferable or assignable except with the written approval of the Department.

(f) The license shall be posted in a conspicuous place on the licensed premises.

(g) The Commission shall adopt rules to ensure that a home care agency shall be deemed to meet the licensure requirements and issued a license without further review or inspection if: (i) the agency is already certified or accredited by the Joint Commission on Accreditation of Health Care Organizations, National League for Nursing, National Home Caring Council, North Carolina Accreditation Commission for In-Home Aide Services, or other entities recognized by the Commission and (ii) the agency is certified or accredited for all of the home care services that it provides; or (iii) in the case of continuing care retirement communities licensed by the North Carolina Department of Insurance under Article 64 of Chapter 58 which also have nursing beds licensed by the Department of Human Resources under Article 6 of Chapter 131E, the Department certifies, as part of its licensure review or survey of the nursing beds, that the facility also meets all of the rules and regulations adopted by the Commission pursuant to this Part. The Department may, at its discretion, determine the frequency and extent of the review and inspection of home health agencies already certified as meeting federal requirements, but not more frequently than on an annual basis for routine reviews.

"§ *131E-139. Adverse action on a license.*

(a) The Department may suspend, revoke, annul, withdraw, recall, cancel or amend a license when there has been a substantial failure to comply with the provisions of this Part or the rules promulgated under this Part.

(b) The provisions of Chapter ~~150A~~ 150B of the General Statutes, The Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a).

"§ *131E-140. Rules and enforcement.*

(a) The Commission is authorized to adopt, amend and repeal all rules necessary for the implementation of this Part. Provided, these rules shall not extend, modify, or limit the licensing of individual health professionals by their respective licensing boards; nor shall these rules in any way be construed to extend the appropriate scope of practice of any individual health care provider.

(a1) The Commission shall adopt rules that recognize the different types of home care services and shall adopt specific requirements for the provision of each type of home care service.

(b) The Department shall enforce the rules adopted or amended by the Commission with respect to home ~~health~~ care agencies.

"§ *131E-141. Inspection.*

(a) The Department shall inspect home ~~health~~ care agencies in accordance with rules adopted by the Commission to determine compliance with the provisions of this Part and the rules established by the Commission.

(b) Notwithstanding the provisions of G.S. 8-53, 'Communications between physician and patient,' or any other provision of law relating to the confidentiality of communications between physician and patient, the representatives of the Department who make these inspections may review any writing or other record in any recording medium which pertains to the admission, discharge, medication, treatment, medical condition, or history of persons who are or have been clients of the agency being inspected unless that client objects in writing to review of that client's records. Physicians, psychiatrists, nurses, and anyone else involved in giving treatment at or through an agency who may be interviewed by representatives of the Department may disclose to these representatives information related to any inquiry, notwithstanding the existence of the physician-patient privilege in G.S. 8-53, 'Communication between physician and patient,' or any other rule of law; Provided the client has not made written objection to this disclosure. The agency, its employees, and any person interviewed during these inspections shall be immune from liability for damages resulting from the disclosure of any information to the Department. Any confidential or privileged information received from review of records or interviews shall be kept confidential by the Department and not disclosed without written authorization of the client or legal representative, or unless disclosure is ordered by a court of competent jurisdiction. The Department shall institute appropriate policies and procedures to ensure that this information shall not be disclosed without authorization or court order. The Department shall not disclose the name of anyone who has furnished information concerning an agency without the consent of that person. Neither the names of persons furnishing information nor any confidential or privileged information obtained from records or interviews shall be considered 'public records' within the meaning of G.S. 132-1, '"Public records" defined.' Prior to releasing any information or allowing any inspections referred to in this section, the client must be advised in writing by the licensed agency that the client has the right to object in writing to release of information or review of

the client's records and that by an objection in writing the client may prohibit the inspection or release of the records.

"§ *131E-141.1. Penalties for violation.*

Any person who knowingly and willfully establishes, conducts, manages or operates any home care agency without a license is guilty of a misdemeanor and upon conviction is liable for a fine of not more than five hundred dollars ($500.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense.

"§ *131E-142. Injunction.*

(a) Notwithstanding the existence or pursuit of any other remedy, the Department ~~may,~~ shall, in the manner provided by law, maintain an action in the name of the State for injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, management or operation of a home ~~health~~ care agency ~~with~~ without a license.

(b) If any person shall hinder the proper performance of duty of the Secretary or a representative in carrying out the provisions of this Part, the Secretary may institute an action in the superior court of the county in which the hindrance occurred for injunctive relief against the continued hindrance irrespective of all other remedies at law.

(c) Actions under this section shall be in accordance with Article 37 of Chapter 1 of the General Statutes and Rule 65 of the Rules of Civil Procedure."

Sec. 2. The Commission shall adopt rules necessary to regulate home care services provided by a hospital. Such rules shall be comparable, but not necessarily identical to the Commission's rules for home care agencies and becomes effective July 1, 1992.

Sec. 3. This act becomes effective July 1, 1992. The Commission shall upon ratification develop rules to implement this act; provided that these rules shall become effective July 1, 1992. During the development of the Commission's rules, the Department shall study whether any additional appropriations will be necessary to implement this act; and shall report the results of its study to the beginning of the 1992 Session of the General Assembly.

In the General Assembly read three times and ratified this the 29th day of April, 1991.

H.B. 206 **CHAPTER 60**

AN ACT TO SPECIFY AND MAKE UNIFORM THROUGHOUT THE STATE THE MANNER OF FILLING VACANCIES IN THE OFFICE OF REGISTER OF DEEDS, AND TO CLARIFY THAT THE REGISTER OF DEEDS TERM IS FOUR YEARS IN ALL COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-5 reads as rewritten:

"*§ 161-5. Vacancy in office.*

(a) ~~When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law.~~

~~(a1)~~ When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds ~~were~~ was elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy. ~~Counties subject to this subsection are not subject to subsection (a). This subsection shall apply only in the following counties: Alamance, Alleghany, Ashe, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Madison, McDowell, Mecklenburg, Moore, New Hanover, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Surry, Transylvania, Wake, Watauga, and Yancey.~~

(b) In the interim between ~~such~~ a vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office by the lawful successor to the office of register of deeds."

Sec. 2. G.S. 161-2 reads as rewritten:

"*§ 161-2. Four-year term for registers of ~~deeds; counties excepted.~~ deeds.*

~~At the general election for the year 1936 and quadrennially thereafter there shall be elected in each county of this State by the qualified voters thereof a register of deeds, who shall serve for a term of four years from the first Monday in December after his election and until his successor is elected and qualified: Provided, however, that this section shall not apply to Alexander, Ashe, Beaufort, Cherokee, Clay, Dare, Davidson, Halifax, Haywood, Hyde, Jackson, Johnston, Lincoln, Macon, Mitchell, Moore, Orange, Rowan, Swain, Vance and Yadkin Counties.~~ A register of deeds shall be elected in each county of the State by the qualified voters of the county. The

register of deeds shall serve for a term of four years beginning on the first Monday in December after the election and until a successor register of deeds is elected and qualified."

Sec. 3. This act does not change the terms of registers of deeds presently in office, or the time for election of registers of deeds as previously established by general and local law.

Sec. 4. Chapter 14 of the 1991 Session Laws is repealed.

Sec. 5. Section 1 of this act is effective upon ratification and applies to all vacancies occurring after that date. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of April, 1991.

H.B. 339 **CHAPTER 61**

AN ACT TO EXEMPT PASQUOTANK COUNTY FROM THE REQUIREMENTS OF ARTICLE 12 OF CHAPTER 160A OF THE GENERAL STATUTES AS TO THE LEASE OR SALE OF CERTAIN PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The requirements of Article 12 of Chapter 160A of the General Statutes relating to the methods and procedures for selling or leasing property do not apply to the sale or lease of property owned by Pasquotank County to be used for industrial development of a Pasquotank County industrial park consisting of approximately 550 acres located in the northern portion of the county.

Sec. 2. This act is effective with respect to a sale or lease only if the sale or lease is given prior approval by a Resolution of the Pasquotank County Board of Commissioners setting forth the terms of and authorizing the sale or lease. The sale or lease may be for cash or deferred payments secured by a purchase money deed of trust. A sale or lease effected under the authority of this act may be negotiated and consummated without further formality other than the Resolution by the Board of Commissioners.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified

H.B. 78 **CHAPTER 62**

AN ACT TO CLARIFY FUNERAL BENEFITS PROVIDED BY ALL BURIAL ASSOCIATIONS OPERATING IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of G.S. 143B-472.3 reads as rewritten:

"Article 2. The objects and purposes for which this association is formed and the purposes for which it has been organized, and the methods and plan of operation of this association shall be to provide a plan for each member of this association for the payment of one funeral benefit for each member, which ~~benefit~~ shall consist of a funeral benefit in cash or merchandise and service, with no free embalming or free ambulance service included in ~~such benefits~~ this benefit. No other free service or any other thing free shall be held out, promised or furnished, in any case. Such funeral benefit shall be in the amount of one hundred dollars ($100.00) of cash or merchandise and service, without free embalming or free ambulance service, for persons of the age of 10 years and over, or in the amount of fifty dollars ($50.00) for persons under the age of 10 years; provided, however, that any member of this association of the age of 10 years or more may purchase a double benefit (for a total benefit of two hundred dollars ($200.00)), and provided further, however, that any member of this association under the age of 10 years may purchase a double benefit (for a total benefit of one hundred dollars ($100.00)) or a quadruple benefit (for a total benefit of two hundred dollars ($200.00)); however, any additional benefit (as set out herein) shall be based on the assessment rate, as provided in Article 6 of this section, at the attained age of applicant at the time the additional benefit takes effect. The purchase of an additional benefit shall not be available to any member who cannot fulfill the requirements as set forth in Article 3 of this section.

Provided, further, that mutual burial associations organized and operating pursuant to this Article may offer for sale to its members in good standing, funeral benefits payable only in cash in excess of two hundred dollars ($200.00), but those sales shall be subject to all applicable insurance laws of this State and shall in no manner be subject to the provisions of this Article or impair whatsoever funds heretofore or hereafter collected and held by that Association pursuant to this Article. All mutual burial association policies heretofore or hereafter sold in this State in an amount of two hundred dollars ($200.00) or less shall continue to be administered by the Burial Association Administrator and shall be subject to all provisions of this Article."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of April, 1991.

H.B. 224 **CHAPTER 63**

AN ACT TO PROVIDE THAT AN APPEAL FOR A TRIAL DE NOVO MAY BE WITHDRAWN AFTER THE CALENDARING OF THE CASE UPON CONSENT OF THE COURT AND THE ATTACHMENT OF COURT COSTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1431 is amended by adding a new subsection to read:

"(h) The defendant may withdraw his appeal after the calendaring of the case for trial *de novo* only by consent of the court, and with the attachment of costs of that court, unless the costs or any part of the costs are remitted by the court. The case may then be remanded by order of the court to the court from which the appeal was taken for execution of the judgment with any additional court costs that attached and that have not been remitted."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 30th day of April, 1991.

H.B. 343 **CHAPTER 64**

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE TO REDUCE ITS PRIVILEGE LICENSE TAX PENALTIES AND TO AUTHORIZE CERTAIN CITIES TO ALLOW CREDITS FOR PRIVILEGE LICENSE TAX PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-109(e) reads as rewritten:

"(e) The provisions of this section for the collection of delinquent license taxes shall apply to license taxes levied by the cities and towns of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the State and counties of this ~~State:~~ State, except as provided in this subsection. ~~Provided, the~~ The municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section. A city or town may reduce the five percent (5%) tax penalty provided in subsection (c) to a lower percentage."

Sec. 2. G.S. 105-109(e) reads as rewritten:

"(e) The provisions of this section for the collection of delinquent license taxes shall apply to license taxes levied by the cities and towns

of this State under authority of this Article, or any other provision of law, in the same manner and to the same extent as they apply to taxes levied by the State and counties of this ~~State:~~ State, except as provided in this subsection. ~~Provided, the~~ The municipal officer charged with the duty of collecting municipal taxes may exercise the powers vested in the sheriff by this section. In the case of tax penalties under subsection (c) that have been paid, a city or town may, for good cause shown, allow a tax credit against a subsequent year's tax for part or all of the tax penalties paid."

Sec. 3. Section 1 of this act becomes effective July 1, 1991, and applies only to the City of Charlotte and to taxes and penalties imposed by that city. Section 2 of this act is effective upon ratification, expires October 1, 1992, and applies only to cities with a population of 380,000 or more according to the most recent decennial federal census and to taxes and penalties imposed by those cities. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of April, 1991.

S.B. 10 **CHAPTER 65**

AN ACT TO MAKE CERTAIN TECHNICAL AND CLARIFYING AMENDMENTS TO CHAPTER 126 OF THE GENERAL STATUTES REGARDING THE STATE PERSONNEL SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-4 reads as rewritten:

"*§ 126-4. Powers and duties of State Personnel Commission.*

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) ~~A position~~ Position classification ~~plan~~ plans which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) ~~A compensation plan~~ Compensation plans which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable ~~qualifications, as to age, character, physical condition, and other attributes~~ qualifications as to education, experience, specialized training, licenses, certifications, and other job-related requirements pertinent to the work to be performed.

(4) ~~A recruitment program to attract applicants to public employment~~ Recruitment programs designed to promote public employment, communicate current hiring activities within State government, and attract a sufficient flow of internal and external applicants; and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, Birthday ~~for all years after 1987,~~ and Veterans Day. Provided, however, that the Commission shall not provide for ~~a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday.~~ more than 11 paid holidays a year.

(6) The appointment, promotion, transfer, demotion and ~~suspension.~~ suspension of employees.

(7) Cooperation with the Department of Public ~~Instruction, the State Board of Education, the Board of Governors of~~ Education, the University of North Carolina, and the ~~colleges and universities~~ Community Colleges of the State and other appropriate resources in developing ~~pre-service and in- service training programs.~~ programs in, including but not limited to, management and supervisory skills, performance evaluation, specialized employee skills, accident prevention, equal employment opportunity awareness, and customer service; and to maintain an accredited Certified Public Manager program.

(7a) The separation of employees.

(8) The evaluation of employee performance, the granting of ~~salary increments,~~ performance salary increases, and a program of meritorious ~~serice~~ service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, ~~and reinstatement~~ reinstatement, and any other issue defined as a contested case issue by this Chapter in all cases as the Commission shall find justified.

(10) ~~Such~~ Programs of safety, health, employee assistance, productivity incentives, equal opportunity and such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and ~~reasonable~~ modern system of personnel administration.

This subdivision may not be construed to authorize the establishment of an incentive pay program.

(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(14) The implementation of G.S. 126-5(e).

(15) Recognition of State employees, public personnel management, and management excellence.

Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the Department, to transfer, demote, or separate a State

(1) Employee in a grade 60 or lower position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;

(2) Employee in a grade 61 to grade 65 position who has not been continuously employed by the State of North Carolina for the immediate 36 preceding months;

(3) Employee in a grade 66 to grade 70 position who has not been continuously employed by the State of North Carolina for the immediate 48 preceding months; or

(4) Employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months."

Sec. 2. G.S. 126-5(e) reads as rewritten:

"(e) An exempt employee may be transferred, demoted, or separated from his position by the department head authorized to designate the exempt position except:

(1) When an employee who has the minimum service requirements described in subsection (c)(1) above but less than 10 years of cumulative service in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than just cause, the employee shall have priority to any position that becomes available for which the employee is qualified, according to rules and regulations regulating and defining priority as promulgated by the State Personnel Commission; or

(2) When an employee who has 10 years or more cumulative service, including the immediately preceding 12 months, in subject positions prior to placement in an exempt position is removed from an exempt position, for reasons other than

just cause, the employee shall be reassigned to a subject position within the same department or agency, or if necessary within another agency, and within a 35 mile radius of the exempt position, at the same grade and ~~step~~ salary, including all across-the-board increases since placement in the position designated as exempt, as his most recent subject position.

~~This subsection shall apply to employees removed from exempt positions after July 1, 1985.~~"

Sec. 3. G.S. 126-6 reads as rewritten:

"~~*§ 126-6. Policies continued; powers, etc., transferred.*~~

~~(a) All classifications, grades, salaries, conditions of work, and rules and regulations established prior to July 1, 1965, by the State Personnel Council, the State Personnel Director or the North Carolina Merit System Council shall remain in force until amended, repealed, or superseded by the Board, acting under the authority of this Chapter.~~

~~(b) The State Personnel Board and the State Personnel Director herein provided shall be the successors of the State Personnel Council, the State Personnel Director, North Carolina Merit System Council, and the Merit System Supervisor. All records and property in the custody of these agencies and individuals are hereby transferred to the State Personnel Board and the State Personnel Department, effective July 1, 1965.~~

~~(c) Any status of employment or privilege previously attained by an employee in accordance with the State Personnel Act or the State Merit System Act shall continue under the provisions of this Chapter.~~"

Sec 4. G.S. 126-7.1(c) reads as rewritten:

"(c) If a State ~~employee;~~ employee subject to this section:

(1) Applies for another position of State employment; and

(2) Has substantially equal qualifications as an applicant who is not a State employee

then the State employee shall receive priority consideration over the applicant who is not a State employee. This priority consideration shall not apply when the only applicants considered for the vacancy are current State employees."

Sec. 5. G.S. 126-11(d) reads as rewritten:

"(d) In order to define 'substantially equivalent,' the State Personnel Commission is authorized to promulgate rules and regulations to implement the federal merit system standards and these regulations at a minimum shall include: recruitment and selection of employees; position classification; pay administration; training; employee relations; equal employment opportunity; and records and reports."

Sec. 6. G.S. 126-16 reads as rewritten:

"*§ 126-16. Equal opportunity for employment and compensation by State departments and agencies and local political subdivisions.*

All State departments and agencies and all local political subdivisions of North Carolina shall give equal opportunity for employment and compensation, without regard to race, religion, color, creed, national origin, sex, age, or handicapping condition as defined in G.S. 168A-3 to all persons otherwise qualified, except where specific age, sex or physical requirements constitute bona fide occupational qualifications necessary to proper and efficient administration. This section with respect to equal opportunity as to age shall be limited to individuals who are at least 40 years of ~~age but less than 70 years of age,~~ age."

Sec. 7. G.S. 126-35(a) reads as rewritten:

"§ 126-35. Written statement of reason for disciplinary action.

(a) No permanent employee subject to the State Personnel Act shall be discharged, suspended, or ~~reduced in pay or position,~~ demoted for disciplinary reasons, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. ~~A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery.~~ However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision."

Sec. 8. G.S. 126-74 reads as rewritten:

"*§ 126-74. Work Options Program established.*

There is established a Work Options Program for State employees in the ~~Division~~ Office of State Personnel to be administered by the State Personnel Commission. The State Personnel Director shall assign an employee within the ~~Division~~ Office of State Personnel, to be known as the State Work Options Coordinator, to direct the Work Options Program as established in this Article."

Sec. 9. G.S. 126-83 reads as rewritten:

"*§ 126-83. Exceptions.*

Notwithstanding G.S. 126-5, and notwithstanding provisions in that section that only certain Articles of this Chapter apply to some employees, this Article applies to all persons covered by this Chapter except those exempted by G.S. 126-5(c) (2), G.S. 126-5(c)(3), G.S. 126-5(c)(4), G.S. 126-5(c1), G.S. 126-5(c2), or G.S. 126-5(c3), but this Article does not apply to those persons covered by G.S. 126-5(a)(2). G.S. 128-15 shall apply to those persons exempted from coverage of this Article, but shall not apply to any person covered by this Article."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1991.

S.B. 161 **CHAPTER 66**

AN ACT TO REQUIRE THAT THE DEPARTMENT OF HUMAN RESOURCES COMPLETE STAFF REVIEW OF LOCAL NEGATIVE ACTIONS WITHIN SIXTY DAYS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-34(h) reads as rewritten:

"(h) The Secretary shall establish a penalty review committee within the Department, which shall review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129. The Secretary shall ensure that departmental staff review of local departments of social services' penalty recommendations along with prepared staff recommendations for the penalty review committee are completed within 60 days of receipt by the Department of the local recommendations. The Penalty Review Committee shall not review penalty recommendations agreed to by the Department and the long-term care facility for Type B violations except those violations that have been previously cited against the long-term care facility during the previous 12 months or within the time period of the previous licensure inspection, whichever time period is longer. The Secretary shall ensure that the Nursing Home/Rest Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:

(1) A licensed pharmacist;
(2) A registered nurse experienced in long-term care;
(3) A representative of a nursing home;
(4) A representative of a domiciliary home; and

(5) A public member.

Neither the pharmacist, nurse, nor public member appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or domiciliary home.

Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 1st day of May, 1991.

H.B. 157 **CHAPTER 67**

AN ACT TO AMEND THE CHARTER OF THE CITY OF GREENSBORO WITH RESPECT TO FAIR HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Section 3.64 of the City of Greensboro Charter, as set forth in Section 1, Chapter 132 of the 1981 Session Laws, reads as rewritten:

"Sec. 3.64. Fair Housing. ~~The city council shall have the power to adopt ordinances to insure that all housing opportunities in the City of Greensboro shall be equally available to all persons without regard to race, color, religion, sex or national origin. Such ordinances may regulate or prohibit any act, practice, activity or procedures related directly or indirectly to the sale or rental of public or private housing which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons. However, in accordance with Title VIII on Fair Housing, the following shall be exempt from coverage:~~

~~(a) The rental of a housing accommodation in a building containing accommodations for not more than four families living independently of each other if the lessor or a member of his family resides in one of those accommodations.~~

~~(b) The rental of a room or rooms in a housing accommodation by an individual if he or a member of his family resides there.~~

~~(c) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.~~

~~(d) With respect to discrimination based on religion, housing accommodations owned or operated for other than a commercial purpose by a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled~~

~~by or in conjunction with a religious organization, association or society whereby the sale, rental or occupancy of such housing accommodations is limited or preference is given to persons of the same religion, unless membership in such religion is restricted because of race, color, national origin or sex.~~

(a) Legal Authority; Enforcement.

The City Council may adopt ordinances prohibiting discrimination based on race, color, religion, sex, handicap, familial status, or national origin in the sale, rental or advertising of dwellings, in the provision of brokerage services or in the availability of residential real estate-related transactions. Such ordinances may regulate or prohibit any act, practice, activity or procedure related directly or indirectly, to the sale or rental of public or private housing, that affects or may tend to affect the availability or desirability of housing on an equal basis to all persons, and may:

(1) Provide that the appropriate person, commission or committee as designated by the City Council, be granted the power and authority to initiate complaints regarding fair housing;

(2) Provide that the appropriate person, commission or committee as designated by the City Council, be granted the power and duties to take any action deemed necessary by the City Council for the proper implementation and enforcement of the fair housing ordinance;

(3) Allow an aggrieved person one year after an alleged discriminatory housing practice to file a written complaint with the appropriate department, commission or committee as designated by the City Council;

(4) Allow an aggrieved person two years to institute a civil action in the Superior Court Division of the General Court of Justice for an alleged discriminatory housing practice;

(5) Provide that an aggrieved person shall be given an option to either proceed under the City's administrative hearing process or to file a civil action in the Superior Court Division of the General Court of Justice;

(6) Provide that if an aggrieved person elects a civil action in lieu of the City's administrative hearing process, the City may, if requested by the aggrieved person, commence and maintain the civil action seeking relief on behalf of the aggrieved person;

(7) Provide that investigation and conciliation of fair housing complaints filed pursuant to this Chapter be completed within 100 days after the filing of the complaint, unless it is impracticable to do so;

(8) Provide that violations constitute a criminal offense;
(9) Subject the offender to civil penalties; and
(10) Provide that the City or the aggrieved person may enforce the ordinances by application to the Superior Court Division of the General Court of Justice for appropriate legal and equitable remedies, including but not limited to mandatory and prohibitory injunctions, temporary restraining orders, orders of abatement, actual and punitive damages, and attorney's fees, and the court shall have jurisdiction to grant such remedies.

The City Council may also amend any ordinance adopted pursuant to the provisions contained in this section to ensure that the ordinance remains substantially equivalent to Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

(b) Exemptions.

The following shall be exempt from the provisions of any ordinance adopted pursuant to the provisions of this section:

(1) Nothing other than the prohibitions against discriminatory advertising applies to the sale or rental of any single family house by an owner, provided the owner does not own or have any interest in more than three single family houses at any one time, the house is sold or rented without the use of a real estate broker, agent or salesperson or the facilities of any person in the business of selling or renting dwellings, provided further that if the owner selling the house does not reside in it at the time of the sale or was not the most recent resident of the house prior to such sale, the exemption in this paragraph applies to only one such sale in any 24-month period.
(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his or her residence.
(3) The rental of a room or rooms in a private house, not a boarding house, if the lessor or a member of his family resides in the house.
(4) A religious organization, association or society or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association, or society, may limit the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion or may give preference to persons of the same

religion, unless membership in the religion is restricted because of race, color, sex, handicap, familial status or national origin.

(5) A private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodging which it owns or operates for other than a commercial purpose, may limit the rental or occupancy of such lodging to its members or may give preference to its members.

(6) With respect to discrimination based on sex, the rental or leasing of housing accommodations in single-sex dormitory property.

(7) The sale, rental, exchange or lease of commercial real estate (real property not intended for residential use).

(8) The applicability of any reasonable local, State or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling.

(9) Conduct against a person because the person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in section 102 of the Controlled Substance Act (21 U.S.C. § 802) or Article 5 of Chapter 90 of the General Statutes, the North Carolina Controlled Substances Act.

(10) The provisions of this section regarding discrimination based on familial status do not apply to housing for older persons. As used in this section, 'housing for older persons' means housing:

a. Provided under any State or federal program that the Secretary of Housing and Urban Development determines is specifically designed and operated to assist elderly persons (as defined in the State or federal program); or

b. Intended for, and solely occupied by, persons 62 years of age or older; or

c. Intended and operated for occupancy by at least one person 55 years of age or older per unit that satisfy the following criteria:

1. The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; and

2. That at least eighty percent (80%) of the units are occupied by at least one person 55 years of age or older per unit; and
3. The publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

d. Housing shall not fail to meet the requirements for housing for older persons by reason of:
1. Persons residing in such housing as of the date of enactment of an ordinance pursuant to this section who do not meet the age requirements of Section 3.64(b)(10)b. or c., provided that new occupants of such housing meet the age requirements of Section 3.64(b)(10)b. or c.; or
2. Unoccupied units, provided that such units are reserved for occupancy by persons who meet the age requirements of Section 3.64(b)(10)b. or c.

e. Housing facilities newly constructed for first occupancy after the date of enactment of an ordinance pursuant to this section shall satisfy the requirements of Section 3.64(b)(10)c. if:
1. When twenty-five percent (25%) of the units are occupied, eighty percent (80%) of the occupied units are occupied by at least one person 55 years of age or older; and thereafter
2. Eighty percent (80%) of all newly occupied units are occupied by at least one person 55 years of age or older until such time as eighty percent (80%) of all units in the housing facility are occupied by at least one person 55 years of age or older; and
3. There are units occupied by employees of the housing facility, and family members residing in the same unit who are under 55 years of age, provided the employees perform substantial duties directly related to the management or maintenance of the housing."

Sec. 2. The title of Section 3.64.1 of the City of Greensboro Charter, as set forth in Section 1, Chapter 51 of the Session Laws of 1987, reads as rewritten:

"Sec. 3.64.1. ~~Enforcement~~ Subpoena Power."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of May, 1991.

H.B. 34 **CHAPTER 68**

AN ACT TO INCREASE THE PENALTIES FOR VIOLATIONS OF THE DEBT COLLECTION PRACTICES ACTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 75-56 reads as rewritten:

"*§ 75-56. Application.*

The specific and general provisions of this Article shall exclusively constitute the unfair or deceptive acts or practices proscribed by G.S. 75-1.1 in the area of commerce regulated by this Article. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, in private actions or actions instituted by the Attorney General, civil penalties in excess of ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) shall not be imposed, nor shall damages be trebled for any violation under this Article."

Sec. 2. G.S. 58-70-130 reads as rewritten:

"*§ 58-70-130. Civil liability.*

(a) Any collection agency which violates Part 3 of this Article with respect to any debtor shall be liable to that debtor in an amount equal to the sum of any actual damages sustained by the debtor as a result of the violation.

(b) Any collection agency which violates Part 3 of this Article with respect to any debtor shall, in addition to actual damages sustained by the debtor as a result of the violation, also be liable to the debtor only in an individual action, and its additional liability therein to that debtor shall be for a penalty in such amount as the court may allow, which shall not be less than one hundred dollars ($100.00) for each violation nor greater than ~~one thousand dollars ($1,000).~~ two thousand dollars ($2,000) for each violation.

(c) The specific and general provisions of Part 3 of this Article shall constitute unfair or deceptive acts or practices proscribed herein or by G.S. 75-1.1 in the area of commerce regulated thereby. Notwithstanding the provisions of G.S. 75-15.2 and 75-16, civil penalties in excess of ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) for each violation shall not be imposed, nor shall damages be trebled for any violation under Part 3 of this Article.

(d) The remedies provided by this section shall be cumulative, and in addition to remedies otherwise available. Provided, that any punitive damages assessed against a collection agency shall be reduced by the amount of the civil penalty assessed against such agency pursuant to subsection (b)."

Sec. 3. This act is effective upon ratification and applies to actions brought on or after that date.

In the General Assembly read three times and ratified this the 2nd day of May, 1991.

S.B. 148 **CHAPTER 69**

AN ACT TO CLARIFY THAT THE PRODUCTION OF CROPS, FRUITS, VEGETABLES, ORNAMENTAL AND FLOWERING PLANTS, ETC., IS A BONA FIDE FARM PURPOSE IN THE ZONING STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-340 reads as rewritten:

"*§ 153A-340. Grant of power.*

For the purpose of promoting health, safety, morals, or the general welfare, a county may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, or other purposes, and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11.

These regulations may not affect bona fide farms, but any use of farm property for nonfarm purposes is subject to the regulations. Bona fide farm purposes include the production and activities relating or incidental to the production of crops, fruits, vegetables, ornamental and flowering plants, dairy, livestock, poultry, and all other forms of agricultural products having a domestic or foreign market. The regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the board of commissioners may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, the conditions may include requirements that street and utility rights-of-way be dedicated to the public and that recreational space be provided. When issuing or denying special use permits or conditional use permits, the board of commissioners shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the board of commissioners to issue such permits, and every such decision of the board of commissioners

shall be subject to review by the superior court by proceedings in the nature of certiorari.

A county may regulate the development over estuarine waters and over lands covered by navigable waters owned by the State pursuant to G.S. 146-12, within the bounds of that county.

For the purpose of this section, the term 'structures' shall include floating homes. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board of commissioners is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the board of commissioners may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of May, 1991.

H.B. 374 **CHAPTER 70**

AN ACT TO PROVIDE FOR A PERSON HUNTING OR APPLYING FOR A HUNTING LICENSE TO SIGN A STATEMENT ON A FORM PROVIDED BY THE WILDLIFE RESOURCES COMMISSION CONFIRMING THAT HE HAD A HUNTING LICENSE PRIOR TO THE REQUIREMENT OF A HUNTER SAFETY COURSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-270.1A(a) reads as rewritten:

"(a) On or after July 1, 1991, a person, regardless of age, may not procure a hunting license or hunt in this State without producing a certificate of competency or a hunting license issued prior to July 1, 1991, or ~~making out an affidavit~~ signing a statement on a form provided by the Wildlife Resources Commission that he had such a license."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 6th day of May, 1991.

H.B. 392 **CHAPTER 71**

AN ACT TO EXTEND THE REQUIREMENT THAT HUNTERS WEAR BLAZE ORANGE TO ENCOMPASS THE HUNTING OF OTHER TYPES OF GAME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-291.8(a) reads as rewritten:

"(a) Any person hunting ~~bear, deer, or wild boar,~~ game animals other than foxes, bobcats, raccoons, and opossum, or hunting upland game birds other than wild turkeys, with the use of firearms, must wear a cap or hat on his head made of hunter orange material or an outer garment of hunter orange visible from all sides. Hunter orange material is a material that is a daylight fluorescent orange color.

This section does not apply to a landholder, his spouse, or children, who are hunting on land held by the landholder. This subsection shall be enforced by warning ticket only until October 1, 1992, with respect to those hunting rabbit, squirrel, grouse, pheasant, and quail."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 6th day of May, 1991.

S.B. 189 **CHAPTER 72**

AN ACT TO PROVIDE THAT THE AUTHORITY OF THE PRESIDENT PRO TEMPORE OF THE SENATE AND THE SPEAKER OF THE HOUSE OF REPRESENTATIVES CONCERNING THE JOINT LEGISLATIVE COMMISSION ON GOVERNMENTAL OPERATIONS IS THE SAME.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-74 reads as rewritten:

"*§ 120-74. Appointment of members; terms of office.*

The Commission shall consist of 22 members. The ~~President of the Senate, the~~ President pro tempore of the Senate, the Speaker pro tempore of the House, and the Majority Leader of the Senate and the Speaker of the House shall serve as ex officio members of the Commission. The Speaker of the House of Representatives shall appoint nine members from the House. The President pro tempore of the Senate shall appoint ~~eight~~ nine members from the Senate. Vacancies created by resignation or otherwise shall be filled by the original appointing authority. Members shall serve two-year terms beginning and ending on January 15 of the odd-numbered years, except that initial appointments shall begin on July 1, 1975. Members

shall not be disqualified from completing a term of service on the Commission because they fail to run or are defeated for reelection. Resignation or removal from the General Assembly shall constitute resignation or removal from membership on the Commission. The terms of the initial members of the Commission shall expire January 15, 1977."

Sec. 2. G.S. 120-75 reads as rewritten:

"§ *120-75. Organization of the Commission.*

The President pro tempore of the Senate and the Speaker of the House of Representatives shall serve as cochairmen of the Commission. Either of the cochairmen may call a meeting of the Commission."

Sec. 3. G.S. 120-78 reads as rewritten:

"§ *120-78. Compensation and expenses of Commission members.*

Members of the Commission, who are also members of the General Assembly, shall receive subsistence and travel expenses at the rates set forth in G.S. 120-3.1 for General Assembly members. ~~The President of the Senate shall receive subsistence and travel expenses at the rates set forth in G.S. 138-6.~~ The Commission shall be funded by the Legislative Services Commission from appropriations made to the General Assembly for that purpose."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1991.

S.B. 362 **CHAPTER 73**

AN ACT TO EXTEND THE TERM OF OFFICE OF THE MEMBERS OF THE U.S.S. NORTH CAROLINA BATTLESHIP COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-74 reads as rewritten:

"§ *143B-74. U.S.S. North Carolina Battleship Commission -- members; selection; quorum; compensation.*

The U.S.S. North Carolina Battleship Commission of the Department of Cultural Resources shall consist of 18 members including the Secretary of Cultural Resources and the Secretary of ~~Commerce~~ Economic and Community Development who shall serve as voting ex officio members. ~~The initial members of the Commission shall be the appointed members of the current Battleship Commission who shall serve for a period equal to the remainder of their current terms on the Battleship Commission.~~ The members of the Commission appointed for terms to end in 1991 shall serve for an additional two-

year period. At the end of the respective terms of office of the ~~initial~~ members of the ~~Commission.~~ Commission serving in 1991, their successors shall be appointed for terms of ~~two~~ four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. The provisions of the Executive Organization Act of 1973 pertaining to the residence of members of commissions shall not apply to the U.S.S. North Carolina Battleship Commission.

The Governor shall have the power to remove any member of the Commission from office for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13 of the Executive Organization Act of 1973.

The members of the Commission shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Commission shall constitute a quorum for the transaction of business. The Governor shall designate from among the members of the Commission a chairman, vice-chairman and treasurer. The Secretary of Cultural Resources or his designee shall serve as Secretary of the Commission. The Commission shall meet at least twice annually upon the call of the chairman, the Secretary of Cultural Resources, or any seven members of the Commission."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 7th day of May, 1991.

H.B. 267 **CHAPTER 74**

AN ACT TO AMEND THE DEFINITION OF "BUSINESS OPPORTUNITY" AND TO AMEND THE REQUIREMENTS FOR CHARITABLE SOLICITATION LICENSE APPLICANTS TO ALLOW A CERTIFICATE OF DEPOSIT IN LIEU OF A BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-94 reads as rewritten:

"*§ 66-94. Definition.*

For purposes of this Article, 'business opportunity' means the sale or lease of any products, equipment, supplies or services for the purpose of enabling the purchaser to start a business, and in which the seller represents:

(1) That the seller will provide locations or assist the purchaser in finding locations for the use or operation of vending

machines, racks, display cases or other similar devices, or currency-operated amusement machines or devices, on premises neither owned nor leased by the purchaser or seller; or

(2) That it may, in the ordinary course of business, purchase any or all products made, produced, fabricated, grown, bred or modified by the purchaser using in whole or in part the supplies, services or chattels sold to the purchaser; or

(3) The seller guarantees that the purchaser will derive income from the business opportunity which exceeds the price paid for the business opportunity; or that the seller will refund all or part of the price paid for the business opportunity, or repurchase any of the products, equipment, supplies or chattels supplied by the seller, if the purchaser is unsatisfied with the business ~~opportunity; or~~ opportunity and pays to the seller an initial, required consideration which exceeds two hundred dollars ($200.00); or

(4) That it will provide a sales program or marketing program which will enable the purchaser to derive income from the business opportunity which exceeds the price paid for the business opportunity, provided that this subsection shall not apply to the sale of a marketing program made in conjunction with the licensing of a federally registered trademark or a federally registered service mark, or when the purchaser pays less than ~~one~~ two hundred dollars ~~($100.00).~~ ($200.00).

Provided, that 'business opportunity' does not include the sale of an on-going business when the owner of that business sells and intends to sell only that one business opportunity; nor does it include the not-for-profit sale of sales demonstration equipment, materials, or samples, for a total price of two hundred dollars ($200.00) or less."

Sec. 2. G.S. 131C-10 reads as rewritten:

"§ *131C-10. Bond.*

An applicant under G.S. 131C-6 shall, at the time of making application, file with and have approved by the Department a bond in which the applicant shall be the principal obligor in the sum of twenty thousand dollars ($20,000) with one or more sureties satisfactory to the Department, whose liability in the aggregate as such sureties will at least equal the said sum; and the applicant shall maintain said bond in effect so long as the license is in effect. The bond shall run to the State for the use of said bond for any penalties and to any person who may have a cause of action against the obligor of the bond for any losses resulting from the obligor's conduct of any and all activities subject to this Chapter or arising out of a violation of this Chapter or

any rule of the Commission. A bond shall not be required of any applicant who does not personally receive any of the contributions collected and who does not personally handle any of the contributions expended. In lieu of the bond required under this section, an applicant may submit a certificate of deposit in the amount of twenty thousand dollars ($20,000) that is either payable to the State and unrestrictively endorsed to the Department; or in the case of a negotiable certificate of deposit, is unrestrictively endorsed to the Department; or, in the case of a nonnegotiable certificate of deposit, is assigned to the Department in a form satisfactory to the Department. Access to the certificate of deposit in favor of the State is subject to the same conditions as for a bond under this section and shall extend for a period not less than four years after the licensee ceases activities that are subject to this Chapter. The Department shall deliver to the State Treasurer certificates of deposit submitted under this section."

Sec. 3. This act is effective upon ratification and Section 1 applies to business opportunity sales consummated on or after that date.

In the General Assembly read three times and ratified this the 7th day of May, 1991.

H.B. 545 **CHAPTER 75**

AN ACT TO CHANGE THE AUDITS OF ABC PROFITS IN THE TOWN OF ANGIER FROM QUARTERLY TO ANNUALLY.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 626 of the 1969 Session Laws, as amended by Chapter 144 of the 1971 Session Laws reads as rewritten:

"Sec. 6. The ~~net profits, as determined by quarterly audit,~~ local board shall have performed an annual audit and the net profits shall be distributed quarterly and used as follows:

(1) Ten percent (10%) of the net profit shall be paid to the Angier Community Library.

(2) Ten percent (10%) of the net profit may be used by the town Alcoholic Control Board, in its discretion, for educational programs as to the effect of the use of alcoholic beverages and for the rehabilitation of alcoholics. Whenever a person becomes an inebriate from the use of alcoholic beverages and has been committed by the Clerk of Court of Harnett County, as provided in G.S. 35-2, and such person is indigent so that expenses of his care and cure shall constitute a valid charge against the county, as provided in G.S. 35-2,

the town Alcoholic Control Board shall pay to the county such charges; provided, that the town Alcoholic Control Board shall not be required to pay any such charges except where it has agreed with the Clerk of Superior Court to pay such charges prior to the person's commitment. The town Alcoholic Control Board is authorized to participate in and to make contributions to public and private organizations which have rehabilitation programs for alcoholics, when the organization and its programs have been approved by the board. Nothing herein shall be construed as limiting the Alcoholic Control Board's discretion in establishing its educational and rehabilitation program and expenditures therefor within the ten percent (10%) net profits herein allocated.

(3) The remainder of the net profits shall be allocated to the general fund of the town of Angier. The governing body of the town is hereby authorized to appropriate such funds for any proper governmental purpose. Out of the funds allocated to it, the governing body of the town is authorized, at its discretion, to expend up to twenty-five percent (25%) of such funds for recreational programs in the town."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1991.

H.B. 583 **CHAPTER 76**

AN ACT TO MODIFY THE COMPOSITION OF THE KINSTON-LENOIR COUNTY TOURISM DEVELOPMENT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2(a) of Chapter 561 of the 1987 Session Laws, as amended by Chapters 576 and 770 of the 1989 Session Laws, reads as rewritten:

"(a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Kinston-Lenoir County Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following seven members:

(1) A Lenoir County Commissioner appointed by the board of commissioners;

(2) A member of the Kinston City Council appointed by the city council;

(3) ~~Three~~ Two owners or operators of motels, hotels, or other taxable accommodations in Lenoir County that have at least 50 units, ~~one of whom shall be appointed by the Kinston City Council, one by the Lenoir County Board of Commissioners, and one by the Lenoir County Chamber of Commerce;~~ appointed as follows: one by the Kinston City Council and one by the Lenoir County Board of Commissioners; and

(4) ~~Two~~ Three individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Kinston City ~~Council~~ Council, one by the Lenoir County Chamber of Commerce, and one by the Lenoir County Board of Commissioners.

All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a chairman. No member may serve as chairman more than two one-year terms in succession. The Authority shall meet at the call of the chairman or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Lenoir County shall be the ex officio finance officer of the Authority."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 7th day of May, 1991.

S.B. 347 **CHAPTER 77**

AN ACT TO PROVIDE THAT THE COUNTY TAX ASSESSOR SHALL MAKE CERTAIN TAXPAYER BUSINESS RECORDS AVAILABLE TO THE EMPLOYMENT SECURITY COMMISSION ON REQUEST.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-296(h) reads as rewritten:

"(h) Only after the abstract has been carefully reviewed can the assessor require any person operating a business enterprise in the county to submit a detailed inventory, statement of assets and liabilities, or other similar information pertinent to the discovery or appraisal of property taxable in the county. Inventories, statements of

assets and liabilities, or other information secured by the assessor under the terms of this subsection, but not expressly required by this Subchapter to be shown on the abstract itself, shall not be open to public inspection but shall be made available, upon request, to representatives of the Department of ~~Revenue.~~ Revenue or of the Employment Security Commission. Any assessor or other official or employee disclosing information so obtained, except as ~~such disclosure~~ may be necessary in listing or appraising property in the performance of official duties, or in the administrative or judicial proceedings relating to listing, appraising, or other official duties, shall be guilty of a misdemeanor and punishable by ~~fine of~~ a fine not exceeding fifty dollars ($50.00)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1991.

S.B. 457 **CHAPTER 78**

AN ACT TO CONSOLIDATE ALL OF THE SCHOOL ADMINISTRATIVE UNITS IN GUILFORD COUNTY OR TO PROVIDE FOR THE TWO CITY SCHOOL ADMINISTRATIVE UNITS IN THAT COUNTY TO HAVE BOUNDARIES COTERMINOUS WITH THE CITIES, SUBJECT TO A REFERENDUM.

Whereas, the school administrative units in Guilford County have made commitments to pursue the goals of excellence and equity that can be achieved if predicated on school integration; and

Whereas, in order to achieve these goals, the General Assembly finds that it is imperative that equity in educational opportunity for all children be assured regardless of where the children reside and regardless of where the children attend school within Guilford County, in order that the needs of all children attending school in Guilford County are met, regardless of the children's race, gender, or social or economic condition; and

Whereas, to accomplish these goals, the General Assembly further finds that it is imperative that each school in Guilford County become and remain a school of excellence, with each providing the appropriate foundations that will enable graduating high school seniors to meet the standards of admission to a constituent institution of The University of North Carolina, that the administrative, teaching, and educational support personnel of the school system as a whole reflect the demographic makeup of Guilford County, and that greater opportunity must be provided to all parents to become involved in

supporting, enhancing, and nurturing their children's educational process; and

Whereas, if magnet schools or any other similar schools are developed to effect these goals, the General Assembly finds that these schools should provide for strong academic programs and for fair and equitable processes for student assignment and should provide a reasonable access to curriculum areas based upon student demand and a reasonable opportunity for all children in these schools to excel in those curriculum areas that they select; and

Whereas, while progress has been made in planning for and achieving these goals of excellence and equity, more remains to be done if the the children of Guilford County are to reach their full academic, vocational, civic, and human potential; Now, therefore,

The General Assembly of North Carolina enacts:

PART I. CONSOLIDATION OF ALL THREE SYSTEMS

Section 1. The existing Guilford County School Administrative Unit, the existing Greensboro City School Administrative Unit, and the existing High Point City School Administrative Unit are consolidated effective July 1, 1993. The resulting consolidated school administrative unit shall be known as the Guilford County School Administrative Unit.

Sec. 2. (a) The Board of Education of the Guilford County School Administrative Unit shall be composed of eleven members elected on a nonpartisan primary basis at the time of the regular county primary and general elections except that in 1992 the dates of the primary and general election shall be in accordance with subsections (a1) and (b) of this section. One shall be elected from each of nine single-member districts established under subsection (g) of this section, and two shall be elected at large from within the entirety of Guilford County. The results shall be determined in accordance with G.S. 163-294.

The terms of office of members are staggered to allow for continuity on the Board, and all terms, following the initial terms, shall be for four years.

(a1) The initial primary election for the Guilford County Board of Education shall be held on Tuesday, March 10, 1992, and the initial general election shall be held on Tuesday, May 5, 1992.

(b) On Tuesday, May 5, 1992, members for Districts 2, 4, 6 and 8 shall be elected for two-year terms and members for Districts 1, 3, 5, 7 and 9 shall be elected for four-year terms. Also, on Tuesday, May 5, 1992, one of the two at-large members shall be elected for a two-year term; and the other at-large member shall be elected for a four-year term. In 1992, the candidate receiving the highest number

of votes is elected to a four-year term, and the candidate receiving the next highest number of votes is elected to a two-year term. Thereafter, all members shall be elected for four-year terms at the same time as the regular primary and general election dates for county officers.

(c) The members elected in 1992 shall take the oath of office on Monday, June 1, 1992. At that time, this elected Board shall have and assume the powers and duties set forth in Section 4 of this act. On July 1, 1993, this Board shall have and assume all duties granted by law and shall supersede the previous board or boards that had previously administered and governed the schools in Guilford County.

(d) The districts set out in subsection (g) of this section are devised and constituted to meet the requirements of the Voting Rights Act of 1965, as amended, and other applicable constitutional provisions. These districts shall remain the same until changed as provided by law and constitutional mandate.

(e) The qualified voters of Guilford County shall elect the at-large members of the board of education.

(f) The qualified voters of each district shall elect the member of the board of education for that district. Candidates must reside in the district for which they seek to be elected.

(g) The districts are as follows:

(1) District 1 consists of High Point precincts 3, 5, 6, 7, 9, 11, 12, 17, 18, 21, and 22.

(2) District 2 consists of High Point precincts 1, 2, 4, 8, 10, 13, 14, 15, 16, 19, 20, 23 and 24, and Deep River.

(3) District 3 consists of Greensboro precincts 20, 27B, 27C, 34A, 34B, 37B, 38 and 39, and Bruce, North Center Grove, Friendship 1, Oak Ridge and Stokesdale.

(4) District 4 consists of Greensboro precincts 19, 35B, 35C, 40B and 45, and Gibsonville, GIB-G, North Jefferson, South Jefferson, North Madison, South Madison, North Monroe, South Monroe, North Washington and South Washington.

(5) District 5 consists of Greensboro precincts 24C and 43, and Clay, Fentress 1, Greene, Friendship 2, Jamestown 1, Jamestown 2, Jamestown 3, South Sumner and Whitsett.

(6) District 6 consists of Greensboro precincts 14, 17, 18, 22, 23, 24A, 26B and 36, and Fentress 2 and North Sumner.

(7) District 7 consists of Greensboro precincts 10, 11, 12, 13, 16, 21, 27A, 28, 31, 32, 35A, 37A, 40A, 41A and 41B, and South Center Grove.

(8) District 8 consists of Greensboro precincts 2, 4, 5, 7, 9, 15, 24B, 25, 26A and 30.

(9) District 9 consists of Greensboro precincts 1, 3, 6, 8, 29, 33, 42 and 44.

Sec. 3. Elections shall be held in accordance with the applicable provisions of Chapter 115C and Chapter 163 of the General Statutes, except that the Guilford County Board of Elections shall establish the candidate filing period and for 1992 shall establish absentee voting timetables.

Sec. 4. The Board shall take office June 1, 1992, and shall immediately assume authority and responsibility for:

(1) Electing a chairperson and other officers of the Board for one year terms;

(2) Supervising, coordinating, acquiring, contracting for and constructing all new school buildings to be built within the boundaries of the existing three units;

(3) Making contracts, hiring personnel and adopting policies and procedures for the 1993-94 and subsequent school years;

(4) Otherwise planning for the implementation and operation of the consolidated system; and

(5) Preparing and submitting to the Guilford County Board of Commissioners all necessary budgets for school purposes beginning with that for the 1993-94 school year as well as for its own operations prior to that school year.

Otherwise, except as provided by Section 9 of this act, the existing Guilford County and Greensboro and High Point City Boards of Education shall continue to administer their respective units until June 30, 1993.

Sec. 5. (a) The terms of the Guilford County, Greensboro City and High Point City Boards of Education members elected in 1990 who are in office on January 1, 1992, shall be extended through June 30, 1993. The terms of all other members of the Guilford County and Greensboro City Boards of Education and all the members of the High Point City Board of Education in office on January 1, 1992, shall also expire June 30, 1993.

(b) Notwithstanding G.S. 163-125, a member of one of the three existing boards of education shall not be required to resign from the board in order to seek election to the new Guilford County Board of Education.

(c) Upon the effective date of consolidation, the existing Guilford County and Greensboro and High Point City Boards of Education are abolished and replaced by the new Guilford County Board of Education. The Board shall have all the powers and responsibilities previously provided for the Guilford County, Greensboro City and

High Point City Boards and provided by State law generally for county boards of education.

(d) During the period from June 1, 1992 through June 30, 1993, the new Board shall be known as the Interim Guilford County Board of Education and on July 1, 1993, without the necessity of further action by any governmental body, that Board shall thereafter be known as the Guilford County Board of Education.

Sec. 6. Vacancies on the new Guilford County Board of Education shall be filled by vote of a majority of the remaining members of the Board present and voting for the remainder of the unexpired term. In instances in which the member being replaced was elected from within a single member district, the Board must appoint a resident of the district where the vacancy exists.

Sec. 7. Upon the effective date of consolidation, the title to all property of the existing Guilford County Board of Education, the existing Greensboro City Board of Education and the existing High Point City Board of Education vests in the new Guilford County Board of Education established under this Part. All claims and demands of every kind which either of the three boards may have at the time of consolidation shall pass and be transferred to the Guilford County Board of Education and that Board shall have the same authority to enforce those claims and demands as the existing Guilford County and Greensboro and High Point City Boards would have if they continued to exist. Any obligations and liabilities of the existing Guilford County and Greensboro and High Point City Boards of Education shall become the obligations and liabilities of the Guilford County Board of Education at the time of consolidation, and those obligations and liabilities may be enforced against that Board to the same extent they might be enforced against the existing boards had they continued to exist.

Sec. 8. Any existing school tax in effect in Guilford County as of the effective date of this legislation shall continue in full force and effect until changed on a county-wide basis as provided by law.

Sec. 9. During the period beginning December 1, 1992, and ending with the abolition of those boards on July 1, 1993, the existing Guilford County Board of Education, the Greensboro City Board of Education, and the High Point City Board of Education may not enter into any contract for a capital outlay item, or appropriate any money for such item, or grant or increase any local salary supplement, or sell, lease, trade or otherwise encumber any property, real or personal, of any of the existing boards of education, without the approval of the Interim Guilford County Board of Education.

Sec. 10. (a) The Interim Guilford County Board of Education shall conduct a facilities study for the consolidated school system.

The purpose of the study will be to identify the extent to which new facilities, modification or rehabilitation to existing facilities, or closing of existing facilities are needed. The study shall be conducted with emphasis on assuring the most efficient use of facilities and the most equitable manner in which facilities can be made available throughout Guilford County. The study shall, further, emphasize achieving the highest level of fiscal responsibility related to capital expenditures consistent with providing an excellent and equitable system of education.

(b) The Interim Guilford County Board of Education, as a part of such study, shall determine what portion, if any, of the identified capital needs it recommends be funded through bonded indebtedness. Should it be determined that bonded indebtedness is appropriate, the determination shall be in accordance with G.S. 115C-506.

Sec. 11. The Interim Guilford County Board of Education shall conduct an organizational study for the consolidated school system. The purpose of the study will be to determine the appropriate number and categories of administrative, supervisory and operational staff for the new system, and to determine the appropriate assignment and duties of such personnel. As a part of the study, the Board shall establish an equitable process relative to employment of such persons who held such positions in one of the existing three school systems. Where positions are not available for such persons because of any reduction in force relative to administrative, supervisory or operational personnel, the Board shall establish fair and equitable policies through which such persons can be given consideration for available vacant positions in which their past experience in that position, or as a principal or classroom teacher, or other certified personnel, can best be utilized for the benefit of the students in the new consolidated system.

Sec. 12. Any student enrolled in a given school at the end of the 1992-93 school year shall have the option, if otherwise qualified, of continuing to attend that school, if operational, until completion of the grades at that school.

Sec. 13. The rights provided under Article 22, Part 3 of Chapter 115C of the General Statutes to persons who are employed by either of the three existing school systems at the time of consolidation shall continue under the new consolidated system to the same extent as if they were still employed in one of the three existing school systems.

Sec. 14. The Guilford County Board of Commissioners shall provide funds to the new Guilford County Board of Education sufficient to fund at least five positions in the Guilford County School Administrative Unit with such personnel's sole or primary responsibility being the development, implementation, maintenance,

enhancement and coordination of parent involvement and student advocate initiatives. Such positions shall be funded at least for the period beginning July 1, 1993, through June 30, 1998, unless the new Guilford County Board of Education shall request that the positions not be funded. The duties and responsibilities of such personnel shall be such as will maximize cooperation and coordination with community, parental, civic, business, and other organizations that can be beneficial in assuring parental involvement and student success. Advisory councils representative of the demographics existing at each school and representative of the community in which the school is located shall be established by the new Guilford County Board of Education to advise and assist the parental involvement/student advocacy personnel in fulfilling their purposes.

Sec. 15. (a) The Board of Commissioners of Guilford County shall provide adequate funding for the operations of the Interim Guilford County Board of Education in fulfillment of its responsibilities as are set out in this act during the period from June 1, 1992, through June 30, 1993.

(b) To assist in assuring that the quality of the educational programs existing within Guilford County shall not decline, local funding for current operating expenses for the consolidated system from 1993-94 will be provided by the Guilford County Commissioners at a per student rate which equals the budgeted local expense per student (average daily membership) of the Greensboro Public School System for fiscal year 1989-90 provided by and appropriated to said system by the Commissioners including the local supplemental tax as found in the adopted budget resolution of the Greensboro City Board of Education dated October 2, 1989, adjusted as follows. For years 1990-91, 1991-92, 1992-93, 1993-94, and 1994-95, the per student rate shall be increased annually by the percentage of salary increase for teachers funded by the State of North Carolina for each previous fiscal year. As used in this paragraph, local funding is not inclusive of any funding that was furnished by the State of North Carolina or the United States. For academic years, 1993-94 through 1998-99, the Guilford County Board of Education, through the use of generally accepted accounting principles, shall identify any net savings achieved as a direct result of consolidation. Such savings shall be reported to the Guilford County Board of Commissioners and those savings may be considered by the Board of Commissioners during its budgeting process.

PART II. COTERMINOUS CITY UNITS

Sec. 16. From and after the effective date of this Part, the Greensboro City School administrative unit shall become, and thereafter shall be, coterminous with the city limits within Guilford

County of the City of Greensboro. Upon any expansion within Guilford County of the city limits and concomitant jurisdiction of the City of Greensboro by annexation, or by other means, the Greensboro City School administrative unit shall expand, by operation of law, to include all the area within Guilford County that is added to and which becomes a part of the jurisdiction of the City of Greensboro within the city limits thereof, but shall not include, and shall not be a part of any extraterritorial jurisdiction that the City of Greensboro may, in its discretion as a government, decide to assume.

The Greensboro Board of Education shall plan for expansion of its administrative unit when it is apprised, by any means, of the proposed expansion of the city limits within Guilford County of the City of Greensboro, and shall be made aware of any proposed expansion of the city limits within Guilford County of the City of Greensboro by the elected officials of the City of Greensboro, by letter, at the time the City of Greensboro, through its elected officials, formally decides to expand its limits. The giving of such notice by the elected officials of the City of Greensboro shall not be a prerequisite to the duty of the Greensboro Board of Education to plan for expansion of such Board's administrative unit. Such planning for expansion shall be a continuing duty of the Greensboro Board of Education.

Sec. 17. From and after the effective date of this Part, the school administrative unit of the High Point Board shall become and thereafter shall include the current boundaries of the City of High Point within Guilford County and will, further, include the High Point area specified in the Greensboro-High Point Joint Annexation Agreement adopted December 20, 1988, and duly placed on file in the Offices of the City Clerks in Greensboro and High Point, respectively, and will further include any future annexations within Guilford County. Provided, that if by September 1, 1991, the City of High Point and the Town of Jamestown have adopted a joint annexation agreement duly placed on file in the Offices of the City Clerks in High Point and Jamestown respectively, the school administrative unit of the High Point Board shall not include the Jamestown area specified in the agreement.

The High Point Board shall plan for expansion of its administrative unit when it is apprised, by any means, of the proposed expansion of the city limits in Guilford County of the City of High Point, and shall be made aware of any proposed expansion of the city limits in Guilford County of the City of High Point by the elected officials of the City of High Point by letter at the time the City of High Point, through its elected officials, formally decides to expand its limits. The giving of such notice by elected officials of the City of High Point shall not be a prerequisite to the duty of the High Point

Board to plan for expansion of the High Point Board's administrative unit, which shall be a continuing duty of the High Point Board.

Sec. 18. After the effective date of this Part, students living in Guilford County outside the city limits of the City of Greensboro or outside of the boundaries that establish the extent to which the City of High Point city limits can be extended as set out in the Greensboro-High Point Joint Annexation Agreement adopted December 20, 1988, and duly placed on file in the Offices of the City Clerks in Greensboro and High Point, shall become and shall be students of the County Board, and the County Board shall assign such students to school in the administrative unit of the County Board. Provided, that if by September 1, 1991, the City of High Point and the Town of Jamestown have adopted a joint annexation agreement duly placed on file in the Offices of the City Clerks in High Point and Jamestown respectively, the students in the Jamestown area specified in the agreement shall not be assigned to school in the school administrative unit of the High Point City Board. The County Board shall do all things necessary and proper, according to law, for the assigning of students to school within the administrative unit.

Sec. 19. The respective Boards of Education of Greensboro, High Point and Guilford shall continue to have all the powers and all the authority that are presently reposed in and delegated to them by law, and the three shall have all the duties and responsibilities presently reposed in them by law, and shall have all authority and power to effect the purposes of this Part.

Sec. 20. (a) The enactment of this Part shall not change the membership and composition of the Greensboro Board of Education, the High Point Board of Education nor of the Guilford County Board of Education. The three boards shall remain as they are by law presently composed except as provided by subsection (b) of this section. If the enactment of this Part shall later evince or suggest a need to change the membership or composition of any board which the enactment of this Part may affect, then such change may be made through appropriate legislation at that time, but no change is contemplated by this Part.

(b) The electoral districts of the three boards of education shall be changed by the respective boards when areas are added to or deleted from their respective school administrative units. After any such areas are added to or deleted, in order to conform to the purposes and provisions of this Part, such changes to the respective electoral districts shall be made no later than 60 days prior to the next filing date for election of members to the respective boards.

Sec. 21. (a) The respective boards of the three administrative units herein defined shall presently continue to use their respective

buildings, property, equipment and other personalty and real estate as they have done in the past. The immediate effect of constituting the city limits in Guilford County of the named municipalities as the limits and outer boundaries of the administrative units of the City Board and the High Point Board may require that one or the other of the board's buildings and property shall be physically within the geographic limits of one of the other boards as defined by this act, or it may occur, upon the effective date of this act, or in the future, upon the expansion of the boundaries and jurisdictional limits of one or the other of the municipalities defined herein owing to the exercise of statutory annexation or some other reason, that the buildings, property, equipment, and other personalty of one of the boards shall be physically within the new limits of one of the boards defined in this act. In such an event or upon the happening of such an event, the administrative unit inside of whose boundaries the property is located shall have the authority to use real and personal property of the other board until such time as the ownership of the property shall be determined and payment or other consideration is made therefor, including payment of the use of all such property, by the Special Compensation Board, which is hereby provided for.

(b) Authority to create a Special Compensation Board, for the purpose of providing fair and equitable compensation to a board for the use and appropriation of its property by another board under the authority of this act is hereby given, delegated, and otherwise provided for.

(c) The number of the members of the Special Compensation Board shall be seven. One each shall be named to serve, by proper nomination and resolution of the respective boards and bodies, by the County Board, the City Board, the High Point Board, the City of Greensboro, the City of High Point, the Guilford County Board of Commissioners, and the State Board of Education.

(d) The Special Compensation Board shall meet and adopt a plan of procedure and such bylaws and other devices of governance as it deems necessary. It may elect officers and a chairperson. This Board shall determine the just compensation that should be paid by a board that appropriates the property of another board for use when property of the one board comes within the area and limits of another board.

(e) The Special Compensation Board shall determine the properties that were financed, in whole or in part, by funds from the State of North Carolina, and for properties, real or personal, that were so financed no compensation shall be made. Only when the properties were financed by funds from the County of Guilford or the special school tax, or both, or from some other local source (such as

the forfeiture of bonds by criminal defendants) shall compensation be made.

(f) The Special Compensation Board should make its findings of compensation within six months of the use or the appropriation by one education board from another.

(g) The Special Compensation Board need not use the fair market value approach to value in determining the compensation, but may consider that approach. The Special Compensation Board shall itemize its findings and conclusions in a report in which it makes its compensation report and this report shall be distributed to each of the boards and bodies represented by a member thereon.

(h) The Special Compensation Board shall, as a body with all members present, hear such evidence as the State Board of Education, the County of Guilford, the City of Greensboro, the City of High Point, and the three school administrative units defined herein wish to present. The Board shall also hear any evidence that any financial institution that has an interest in any of the property involved wishes to present. The Board shall hear any evidence that trustees under the indenture of, or officers concerned with, any outstanding bond issue that may or might affect the property wish to give. The Board may hear such other evidence that it wishes to hear.

(i) The Special Compensation Board shall not change the security of any financial institution, the obligations under any bonds, or the manner of financing any of the affected property, but it may and should recommend ways in which any affected bonds, financial arrangements, mortgages, security devices, indentures, or other devices can be assumed, assigned, or continued in effect by using an appropriating board or by other means, such as refinancing or refloating of a bond issue.

(j) The decision of the Special Compensation Board shall be based upon a majority vote of all the members, and the decision shall be presented in writing to all the parties. Upon its presentation the decision shall be final. Appeal may be taken to the Superior Court of Guilford County within 10 days of the presentation of the Special Compensation Board's written report, but the Superior Court shall affirm the Special Compensation Board's findings and conclusions unless it finds by clear and convincing proof from the evidence presented to it that the Special Compensation Board did not make its findings based on the evidence or on fair methods of appraisal.

(k) The board required by the Special Compensation Board to make compensation to another board shall take all the necessary steps to make the payments required and to assume all the obligations required thereunder. The board whose property is used or appropriated, or both, shall take all the necessary steps to convey

property and otherwise to comply with the Special Compensation Board's decision.

Sec. 22. The tax rates currently applicable for support of the schools in the administrative units involved herein shall not be changed by the enactment of this Part, and all such taxes shall remain in full force and effect.

Sec. 23. The methods and legally instituted means of financing any of the property that might be affected by the use or appropriation, or both, of any such property by one of the three respective boards of education shall not be changed by enactment of this Part, and the board or entity responsible for paying or otherwise compensating any financial institution or other entity or person to whom payment or compensation is owed under any indenture, contract or other security or financing device shall continue to make all required payments or other compensation. Such payment or other compensation shall continue until such time as the using or appropriating board has assumed the payments and any other obligations and until such time as the affected institution, entity or person agrees to accept the new board as the responsible legal entity under the obligation and until such time as all legal documents required by the transfer, assignment, assumption or other legal or contractual devices are executed and approved. In lieu of assumption or assignment by an appropriating or using board, refinancing may be considered as a means of paying any outstanding obligations.

PART III. ELECTION AND OTHER PROVISIONS

Sec. 24. If a majority of the voters voting in the election vote in favor of Part I of this act, and it has not been approved under section 5 of the Voting Rights Act of 1965 by the time of opening of candidate filing for the Guilford County Board of Education or the Greensboro City Board of Education, then the Guilford County Board of Elections, with the approval of the United States Department of Justice, may delay the opening and closing dates for filing of the old Guilford County Board of Education and the Greensboro City Board of Education scheduled to be elected in 1992. This is necessary because the previously scheduled election is not canceled until Part I of this act is approved under section 5 of the Voting Rights Act.

Sec. 25. Submission of this act under section 5 of the Voting Rights Act of 1965 shall be made jointly by the attorneys for the three consolidating units under G.S. 120-30.9G.

Sec. 26. Any student enrolled in a given school at the effective date of Part II of this act will have the option, if otherwise qualified, of continuing to attend a school within that school system until completion of the highest grade that was available at the school in which the student was enrolled.

Sec. 27. Part I or II of this act shall not become effective unless approved by the voters of Guilford County. The Guilford County Board of Elections shall place the question of approval of Part I or Part II of this act before the citizens of Guilford County through referendum on the Tuesday after the first Monday in November, 1991.

Sec. 28. (a) The form of the ballot shall be:

"VOTE FOR ONLY ONE CHOICE

1. [] FOR consolidation of the three school administrative units in Guilford County into one administrative unit.
2. [] FOR the Greensboro City School Administrative Unit to have the same boundaries in Guilford county as the current City of Greensboro, and shall expand to include all areas in Guilford County that might hereafter be added to the City of Greensboro; and the High Point City School Administrative Unit to have the current boundaries of the City of High Point within Guilford County, including the area specified in the Greensboro-High Point Joint Annexation Agreement adopted December 20, 1988, and duly placed on file in the Offices of the City Clerks in Greensboro and High Point, respectively, and will include any future annexations within Guilford County."

(b) If a majority of the votes cast are in favor of question 1, then Part I of this act shall become effective upon the date of certification of the election results, and Part II of this act shall have no force or effect.

(c) If a majority of the votes cast are in favor of question 2, then Part II of this act shall become effective upon the date of certification of the election results, and Part I of this act shall have no force or effect.

Sec. 29. The Guilford County Board of Elections shall certify the results of any election held under this act to the Secretary of State of North Carolina.

Sec. 30. Notwithstanding any provisions of this act to the contrary, if each of the three existing boards of education in Guilford County should agree to and adopt a Plan of Consolidation in accordance with law prior to August 1, 1991, and should the State Board of Education approve the plan prior to September 1, 1991, then Part II and Part III of this act shall be void, and consolidation of the three school systems shall occur as specified in this act and in accordance with any other provisions that may be contained in the Plan of Consolidation that are not in conflict with any provision of this act. After such approval by the State Board of Education, none of the parties to that Plan may withdraw their approval.

Sec. 31. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1991.

H.B. 9 **CHAPTER 79**

AN ACT TO REINSTATE SALES TAX ON MOPEDS, TOW DOLLIES, AND CERTAIN VEHICLE BODIES AND TO ESTABLISH A UNIFORM LONG-TERM LEASING RATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.3(8b) reads as rewritten:

"(8b) 'Motor vehicle' means ~~any vehicle which is self-propelled and designed primarily for use upon the highways, any vehicle which is propelled by electric power obtained from trolley wires but not operated upon rails, and any vehicle designed to run upon the highways which is propelled by a self-propelled vehicle, but shall not include any implement of husbandry, farm tractor, road construction or maintenance machinery or equipment, special mobile equipment as defined in G.S. 20-4.01, any vehicle designed primarily for use in work off the highway, or a manufactured home.~~ a vehicle that is designed primarily for use upon the highways and is either self-propelled or propelled by a self-propelled vehicle, but does not include:

a. A moped as defined in G.S. 20-4.01(27)(d1).
b. Special mobile equipment as defined in G.S. 20-4.01(44).
c. A tow dolly that is exempt from motor vehicle title and registration requirements under G.S. 20-51(10) or (11).
d. A farm tractor or other implement of husbandry.
e. A manufactured home.
f. Road construction or road maintenance machinery or equipment."

Sec. 2. G.S. 105-164.13(32) reads as rewritten:

"(32) Sales of motor vehicles, the ~~separate sales~~ sale of a motor vehicle body ~~and a motor vehicle chassis when the body is~~ to be mounted on ~~the chassis,~~ a motor vehicle chassis when a certificate of title has not been issued for the chassis, and the sale of a motor vehicle body mounted on a motor vehicle chassis that temporarily enters the State so the manufacturer of the body can mount the body on the chassis. ~~of the sale.~~"

Sec. 3. G.S. 105-164.3(7a) reads as rewritten:

"(7a) 'Lease or rental' means ~~the leasing or renting of tangible personal property and the possession or use thereof by the~~

~~lessee or renter for a consideration without transfer of the title of such property,~~ a transfer, for consideration, of the use but not the ownership of property to another for a period of time."

Sec. 4. G.S. 105-187.1 reads as rewritten:

"§ *105-187.1. Definitions.*

The following definitions and the definitions in G.S. 105-164.3 apply to this Article:

(1) 'Commissioner' means the Commissioner of Motor Vehicles.

(2) 'Division' means the Division of Motor Vehicles, Department of Transportation.

(3) 'Long-term lease or rental' means a lease or rental made under a written agreement to lease or rent property to the same person for a period of at least 365 continuous days.

(4) 'Short-term lease or rental' means a lease or rental that is not a long-term lease or rental."

Sec. 5. G.S. 105-187.5(b) reads as rewritten:

"(b) Rate. The tax rate on the gross receipts ~~of~~ from the short-term lease or rental of a motor vehicle is eight percent ~~(8%), unless the vehicle is leased or rented to the same person for a period of more than 90 continuous days. In that circumstance, the tax is eight percent (8%) for the first 90 days the vehicle is leased or rented to the same person and is three percent (3%) for the remainder of the period during which the vehicle is leased or rented to that person.~~ (8%) and the tax rate on the gross receipts from the long-term lease or rental of a motor vehicle is three percent (3%). The maximum tax in G.S. 105-187.3(a) applies to ~~the~~ a continuous lease or rental of a motor vehicle to the same person. ~~when the vehicle is leased or rented to the same person for more than 90 continuous days. Tax paid by a person from the first day of a continuous lease or rental period applies toward the maximum tax.~~"

Sec. 6. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 8th day of May, 1991.

H.B. 688 **CHAPTER 80**

AN ACT TO AUTHORIZE MARTIN COUNTY TO LEVY A ROOM OCCUPANCY AND TRAVEL AND TOURISM TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and scope. The Martin County Board of Commissioners may by resolution, after not

less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall be subject to and pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners

may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Martin County shall, on a monthly basis, remit the net proceeds of the occupancy tax to the Martin County Travel and Tourism Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel and tourism and cultural, recreational, and historic activities in Martin County through advertising and promotion, to sponsor tourist-oriented events and activities in Martin County, and to finance tourist-related capital activities and projects in Martin County. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, which may not exceed three percent (3%) of the gross proceeds.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Martin County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Martin County Travel and Tourism Authority. (a) Appointment and membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating the Martin County Travel and Tourism Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The resolution shall provide that the Authority shall be composed of the following 12 members:

(1) A Martin County Commissioner appointed by the Martin County Board of Commissioners.

(2) Two owners or operators of restaurants, motels, hotels, or other taxable accommodations in Martin County that have at least five units, nominated by representatives of this industry, both to be appointed by the Martin County Board of Commissioners.
(3) One member selected by the Martin County Chamber of Commerce to be appointed by the Martin County Board of Commissioners.
(4) One member appointed by the Martin County Board of Commissioners selected from the Martin County Economic Development Commission.
(5) Five members, one appointed by each member of the Martin County Board of Commissioners.
(6) One member appointed by the Martin County Board of Commissioners selected from the Martin County Historical Society.
(7) One member appointed by the Martin County Board of Commissioners selected from the Robersonville Downtown Merchants Association.

The appointees shall be made from throughout the County by the Martin County Board of Commissioners. All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. The Authority shall elect each year from its membership a Chair. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for Martin County shall be the ex officio finance officer of the Authority.

(b) Terms of office. Members of the Authority shall serve three-year terms except that the Martin County Commissioner appointed pursuant to subdivision (a)(1) shall be appointed yearly by the chairman of the board of commissioners and initial appointees shall serve the following terms:

(1) The Martin County Commissioner appointed pursuant to subdivision (a)(1): one year.
(2) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): one year.
(3) One representative of the motel and restaurant industry appointed pursuant to subdivision (a)(2): three years.
(4) The representative of the Martin County Chamber of Commerce appointed pursuant to subdivision (a)(3): three years.

(5) The representative of the Martin County Economic Development Commission appointed pursuant to subdivision (a)(4): two years.
(6) Three members appointed by Martin County Commissioners pursuant to subdivision (a)(5): one year.
(7) Two representatives appointed by Martin County Commissioners pursuant to subdivision (a)(5): three years.
(8) The representative of the Martin County Historical Society appointed pursuant to subdivision (a)(6): two years.
(9) The representative of the Robersonville Downtown Merchants Association appointed pursuant to subdivision (a)(7): three years.

(c) Limitation on terms. No member of the Authority shall serve more than two consecutive three-year terms.

(d) Powers and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The board of county commissioners may from time to time determine an appropriate percentage not to exceed five percent (5%) of net proceeds that may be expended for administrative services.

(e) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

(f) Notwithstanding the provisions of this act, the board of commissioners may abolish the Martin County Travel and Tourism Authority and itself function and carry out the duties of the Authority provided in this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of May, 1991.

S.B. 149 **CHAPTER 81**

AN ACT TO INCLUDE HORTICULTURE, TREES AND TIMBER, THE RAISING OF LIVESTOCK AND POULTRY, AND AQUACULTURE IN THE DEFINITION OF THE TERMS "AGRICULTURE" AND "AGRICULTURAL" AS THEY ARE USED IN THE AGRICULTURAL DEVELOPMENT ACT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new section to read:

"*§ 106-581.1. Agriculture defined.*

For purposes of this Article, the terms 'agriculture' and 'agricultural' shall refer to the cultivation of soil for production of crops, including but not limited to fruits, vegetables, flowers and ornamental plants, the planting and production of trees and timber, and the raising of livestock, for individual and public use, consumption, and marketing. Further, for purposes of this Article, aquaculture is considered a form of agriculture pursuant to G.S. 106-758."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of May, 1991.

S.B. 551 **CHAPTER 82**

AN ACT TO PERMIT THE UTILITIES COMMISSION TO EXEMPT CELLULAR FROM REGULATION UNDER CHAPTER 62.

The General Assembly of North Carolina enacts:

Section 1. Article 6A of Chapter 62 is amended by adding a new section to read:

"*§ 62-125. Exemption for cellular telephone service.*

Notwithstanding any other provisions of law, the Commission may, to the extent it finds such services to be competitive and such action in the public interest, exempt domestic public cellular radio telecommunications service providers, if licensed by the Federal Communications Commission, from regulation under any or all of the provisions of this Chapter. Nothing in this section shall be construed to diminish any other authority granted the Commission in this Chapter."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

S.B. 829 **CHAPTER 83**

AN ACT CONCERNING THE STATE BOARD OF COMMUNITY COLLEGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-2.1(b)(4)f. reads as rewritten:

"f. At each session of the General Assembly held in an odd-numbered year, the ~~presiding officer of each house~~

Speaker of the House of Representatives and the President Pro Tempore of the Senate shall assign to either a standing or a special committee of that house the duty of receiving from the members of that house nominations of persons to be considered by that house for election to the State Board. The chairmen of the two committees shall jointly determine a common final date for receiving nominations from members of that house, and a common date for reporting to their respective houses their nominations for the State Board. Each committee shall screen the proposed candidates for nomination as to their qualifications, background, lack of statutory disabilities, and willingness and ability to serve if elected. Each Senator and each Representative may nominate only one candidate. When the nominating process is closed, each committee shall list all candidates and shall separately vote 'aye' or 'no' on each candidate to determine whether that person shall be listed as a nominee of the committee. The verbal vote of a majority of those members of the committee present and voting shall constitute one nominee of the committee. An individual cannot be a candidate for nomination to more than one place. If a sufficient number of candidates are submitted to the committee of the House of Representatives then that committee shall nominate at least two persons for each place to be filled by the House of Representatives, otherwise that committee shall nominate at least one person for each place to be filled by the House of Representatives. The committee of the Senate shall nominate at least two persons for each place to be filled by the Senate. No person may simultaneously be a candidate for election by both houses, and if one is nominated in both houses, he shall determine by which house he shall be nominated and so advise the chairman of both committees. The two houses shall, by joint resolution, fix a common date and time for the election of members of the State Board. At the election session in each house, the committee shall report its list of nominees with the term of office indicated for each nominee. The ballot in the House of Representatives shall also include the names of all other persons nominated by a member of that house who are determined by the committee to be qualified for the offices, with the committee's list of nominees being

clearly set out on the ballot. No additional nominations shall be received from the floor. Each house shall then proceed to an election of the State Board. In order to be chosen, a nominee shall receive the votes of a majority of all members present and voting.

When each house has chosen one person for each place to be filled on the State Board, the chairman of the committee shall make a motion for the simultaneous election of those persons by that house to the indicated positions and for the indicated terms. The vote shall then be called electronically. If a majority of those voting shall vote 'aye,' persons named in the motion shall be declared to have been elected. Each house may adopt rules consistent with this section with respect to the election by that house of members of the State Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

H.B. 569 **CHAPTER 84**

AN ACT TO REGULATE PERSONNEL RECORDS OF COMMUNITY COLLEGE SYSTEM EMPLOYEES AND RELATED MATTERS.

Whereas, in 1975, through enactment of Chapter 257 of the 1975 Session Laws, the General Assembly created legislation to give State employees the right and procedure to have material removed from their personnel files and, in the same session, through enactment of Chapter 667, this right and procedure was made applicable to employees of institutions within the Community College System; and

Whereas, in 1979, in Chapter 462 of the 1979 Session Laws, the General Assembly enacted G.S. 115D-5(a) which provided that employees of Community colleges shall be exempt from the provisions of the State Personnel Act; and

Whereas, since enactment of Chapter 462 of the 1979 Session Laws, the General Assembly has intended that all employees of institutions within the Community College System remain exempt from all of the provisions contained in the State Personnel Act; and

Whereas, in the interest of the Community College System and the employees of local institutions within the System, it is important that matters relating to the content and inspection of personnel records of Community College System employees be regulated and that the State Board and each board of trustees give equal opportunity for

employment and compensation of personnel at community colleges without regard to race, religion, color, creed, national origin, sex, age or handicapping conditions; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-5(c1)(10) is repealed.

Sec. 2. G.S. 126-5(c2) reads as rewritten:

"(c2) The provisions of this Chapter shall not apply to:

(1) Public school superintendents, principals, teachers, and other public school employees.

(2) Recodified as G.S. 126-5(c)(4) by Session Laws 1985 (Reg. Sess., 1986), c. 1014, s. 41.

(3) Employees of community colleges whose salaries are fixed in accordance with the provisions of G.S. 115D-5 and G.S. 115D-20."

Sec. 3. Chapter 115D of the General Statutes is amended by adding a new Article 2A as follows:

"ARTICLE 2A.

"Privacy of Employee Personnel Records.

"§ *115D-27. Personnel files not subject to inspection.*

Personnel files of employees of boards of trustees, former employees of boards of trustees, or applicants for employment with boards of trustees shall not be subject to inspection and examination as authorized by G.S. 132-6. For purposes of this Article, a personnel file consists of any information gathered by the board of trustees which employs an individual, previously employed an individual, or considered an individual's application for employment, and which information relates to the individual's application, selection or nonselection, promotion, demotion, transfer, leave, salary, suspension, performance evaluation, disciplinary action, or termination of employment wherever located or in whatever form.

"§ *115D-28. Certain records open to inspection.*

Each board of trustees shall maintain a record of each of its employees, showing the following information with respect to each employee: name, age, date of original employment or appointment, current position, title, current salary, date and amount of most recent increase or decrease in salary, date of most recent promotion, demotion, transfer, suspension, separation, or other change in position classification, and the office or station to which the employee is currently assigned. Subject only to rules and regulations for the safekeeping of records adopted by the board of trustees, every person having custody of the records shall permit them to be inspected and examined and copies made by any person during regular business hours. Any person who is denied access to any record for the

purpose of inspecting, examining or copying the record shall have a right to compel compliance with the provisions of this section by application to a court of competent jurisdiction for a writ of mandamus or other appropriate relief.

"§ *115D-29. Confidential information in personnel files; access to information.*

All information contained in a personnel file, except as otherwise provided in this Article, is confidential and shall not be open for inspection and examination except to the following persons:

(1) The employee, applicant for employment, former employee, or his properly authorized agent, who may examine his own personnel file at all reasonable times in its entirety except for letters of reference solicited prior to employment;

(2) The president and other supervisory personnel;

(3) Members of the board of trustees and the board's attorney;

(4) A party by authority of a subpoena or proper court order may inspect and examine a particular confidential portion of an employee's personnel file; and

(5) An official of an agency of the federal government, State government or any political subdivision thereof. Such an official may inspect any personnel records when such inspection is deemed by the college of the employee, applicant, or former employee whose record is to be inspected as necessary and essential to the pursuance of a proper function of said agency; provided, however, that such information shall not be divulged for purposes of assisting in a criminal prosecution, nor for purposes of assisting in a tax investigation.

Notwithstanding any other provision of this Article, any president may, in his discretion, or shall at the direction of the board of trustees, inform any person or corporation of any promotion, demotion, suspension, reinstatement, transfer, separation, dismissal, employment or nonemployment of any applicant, employee or former employee employed by or assigned to the board of trustees or whose personnel file is maintained by the board and the reasons therefor and may allow the personnel file of the person or any portion to be inspected and examined by any person or corporation provided that the board has determined that the release of the information or the inspection and examination of the file or any portion is essential to maintaining the integrity of the board or to maintaining the level or quality of services provided by the board; provided, that prior to releasing the information or making the file or any portion available as provided herein, the president shall prepare a memorandum setting forth the circumstances which he and the board deem to require the

disclosure and the information to be disclosed. The memorandum shall be retained in the files of the president and shall be a public record.

"*§ 115D-30. Remedy of employee objecting to material in file.*

An employee, former employee or applicant for employment who objects to material in his file may place in his file a statement relating to the materials he considers to be inaccurate or misleading. An employee, former employee or applicant for employment who objects to material in his file because he considers it inaccurate or misleading, and the material has not been placed there in connection with a grievance procedure established by the board of trustees, may seek the removal of such material from the file through grievance procedures to be established by each board of trustees."

Sec. 4. G.S. 115D-77 reads as rewritten:

"*§ 115D-77. Nondiscrimination policy.*

It is the policy of the State Board of Community Colleges and of local boards of trustees of the State of North Carolina not to discriminate among students on the basis of race, gender or national origin.

~~In the employment of professional and all other personnel for institutions operating pursuant to this Chapter, neither the State Board of Community Colleges nor local boards of trustees shall discriminate on the basis of race, gender or national origin.~~

The State Board and each board of trustees shall give equal opportunity for employment and compensation of personnel at community colleges, without regard to race, religion, color, creed, national origin, sex, age, or handicapping conditions, except where specific age, sex or physical or mental requirements constitute bona fide occupational qualifications."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

H.B. 932 **CHAPTER 85**

AN ACT TO ADOPT THE CAROLINA TARTAN AS THE OFFICIAL SCOTTISH TARTAN OF THE STATE OF NORTH CAROLINA.

Whereas, Scottish families began to settle in both North and South Carolina during the last two decades of the seventeenth century; and

Whereas, in the first half of the eighteenth century, large numbers of both Highland Scots and Ulster Scots settled in the two Carolinas; and

Whereas, Scots became major elements of the population of both colonies; and

Whereas, a tartan is a plaid textile design consisting of stripes of varying width and color, each tartan unique to a clan, district, or group; and

Whereas, St. Andrews Societies are organizations for the celebration of things Scottish; and

Whereas, St. Andrews Societies in North and South Carolina arranged for the design of a Carolina Tartan and cosponsored the effort for adoption of the design by the Scottish Tartans Society, which registered the Carolina Tartan in 1981, and

Whereas, those St. Andrews Societies believe that the Carolina Tartan was the first one successfully advanced for a group of states in the United States, although Canadian provinces had their distinctive tartans; and

Whereas, since 1981 tartans have been designed for other states; and

Whereas, the Carolina Tartan is a variation of a tartan associated with King Charles II, who gave the grant in 1663 that made Carolina a proprietary colony; and

Whereas, there is a desire on the part of many North Carolina citizens of Scottish descent to honor their ancestral ties; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 145 of the General Statutes is amended by adding a new section to read:

"*§ 145-15. State tartan.*

The Carolina Tartan is adopted as the official tartan of the State of North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of May, 1991.

H.B. 118 **CHAPTER 86**

AN ACT TO MAKE TECHNICAL CORRECTIONS TO SUBCHAPTER IV OF CHAPTER 113 OF THE NORTH CAROLINA GENERAL STATUTES CONCERNING MARINE FISHERIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-184 reads as rewritten:

"§ *113-184. Possession and transportation of prohibited oyster equipment.*

(a) It is unlawful to carry aboard any vessel subject to licensing requirements under Article 14 under way or at anchor in coastal fishing waters during the regular closed oyster season any scoops, scrapes, dredges, or winders such as are usually or can be used for taking oysters.

(b) If any vessel has recently been under way or at anchor in coastal fishing waters engaged in activity similar in manner to that in which oysters are taken with scoops, scrapes, or dredges and at a time or place in which the taking of oysters is prohibited, the presence on board of the vessel of wet oysters or scoops, scrapes, dredges, lines, or deck wet, indicating the taking of oysters, constitutes *prima facie* evidence that the vessel was engaged in taking oysters unlawfully with scoops, scrapes, or dredges at the time or place prohibited.

~~(c) It is unlawful to carry aboard any vessel subject to licensing requirements under Article 14 under way or at anchor in coastal fishing waters any dredge weighing more than 100 pounds.~~"

Sec. 2. G.S. 113-185(a)(1) reads as rewritten:

"§ *113-185. Fishing near ocean piers; trash or scrap fishing.*

(a) It is unlawful to fish in the ocean from vessels or with a net within 750 feet of an ocean pier licensed in accordance with G.S. 113-156.1. The prohibitions shall be effective when:

(1) Buoys ~~and~~ or beach markers, placed at the owner's expense in accordance with the rules adopted by the Marine Fisheries Commission, indicate clearly to fishermen in vessels and on the beach the requisite distance of 750 feet from the pier, and

(2) The public is allowed to fish from the pier for a reasonable fee.

The prohibition shall not apply to littoral proprietors whose property is within 750 feet of a duly licensed ocean pier."

Sec. 3. G.S. 113-189(a) reads as rewritten:

"§ *113-189. Protection of sea turtles and porpoises.*

(a) It is unlawful to willfully take, disturb or destroy any sea turtles including green, hawks bill, loggerhead, Kemp's ridley, and leatherback turtles, or their nests or eggs."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1991.

H.B. 467 **CHAPTER 87**

AN ACT TO AMEND THE DEFINITION OF "PESTICIDE APPLICATOR".

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-460(29) reads as rewritten:

"(29) 'Pesticide applicator' includes any person who owns or manages a pesticide application business which is engaged in the business of applying pesticides upon the lands or properties of another; any public operator; any golf course operator; any seed treater; any person engaged in demonstration or research pest control; and any other person who acts as a pesticide applicator and is not exempt from this definition. It does not include:

a. Any person who uses or supervises the use of a pesticide (i) only for the purpose of producing an agricultural commodity on property owned or rented by him or his employer, or (ii) only (if applied without compensation other than trading of personal services between producers of agricultural commodities) on the property of another person, or (iii) only for the purposes set forth in (i) and (ii) above.

b. Any person regulated by the North Carolina Structural Pest Control Law (G.S. Chapter 106, Article 4C).

c. Any person certified by the Water Treatment Facility Operators Board of Certification under Article 2 of Chapter 90A of the General Statutes or by the Wastewater Treatment Operators Plant Certification Commission under Article 3 of Chapter 90A of the General Statutes who applies pesticides labeled for the treatment of water or wastewater.

d. Any person who applies antimicrobial pesticides that are not classified for restricted use and are not being used for agricultural, horticultural, or forestry purposes."

Sec. 2. G.S. 143-460 is amended by adding a new subdivision to read:

"(2a) 'Antimicrobial pesticide' means any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating any microorganism pest."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 14th day of May, 1991.

H.B. 350 **CHAPTER 88**

AN ACT TO CLARIFY THE LAW REGARDING THE EMPLOYMENT OF THE EXECUTIVE DIRECTOR OF THE COMMISSION OF INDIAN AFFAIRS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-411 reads as rewritten:

"*§ 143B-411. North Carolina State Commission of Indian Affairs -- executive director; employees.*

The Commission may, subject to legislative or other funds that would accrue to the Commission, employ an executive director to carry out the day-to-day responsibilities and business of the Commission. The executive director shall serve at the pleasure of the Commission. The executive director, also subject to legislative or other funds that would accrue to the Commission, may hire additional staff and consultants to assist in the discharge of his responsibilities, as determined by the Commission. The executive director shall not be a member of the Commission, and shall be of Indian descent."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 15th day of May, 1991.

S.B. 164 **CHAPTER 89**

AN ACT TO REQUIRE THAT DOMICILIARY HOME COST REPORTS BE CERTIFIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-3 reads as rewritten:

"*§ 131D-3. Domiciliary care facilities; reporting requirements.*

The Department of Human Resources, Division of Social Services, by January 1, 1982, shall develop a cost and revenue reporting form for use by all domiciliary care facilities. This form shall be based on the uniform chart of accounts required in G.S. 131D-4. All facilities that receive funds under the State-County Special Assistance for Adults Program shall report total costs and revenues to the Department of Human Resources by March 1 of each year. Facilities licensed under the provisions of G.S. 131D-2(a)(5), facilities that are operated by or under contract with Area Mental Health, Mental Retardation and Substance Abuse Authority, and combination facilities providing either

intermediate or skilled care in addition to domiciliary care shall not be required to comply with the reporting requirements in this section. All facilities shall be required to permit access to any requested financial records by representatives of the Department of Human Resources for audit purposes effective July 1, 1981.

A certified public accountant or public accountant shall certify each cost and revenue report that is submitted pursuant to this section. The certification statement shall include the following certifications, validations, and verifications:

(1) The verification that the amounts reported in the cost report relate to the proper calendar year, and reconcile to the general ledger, tax return, and appropriate financial statements;

(2) The validation of payroll costs reported for federal form 941 returns;

(3) The verification that depreciation expense is supported by appropriate backup schedules;

(4) The verification that interest expense reported agrees with bank statements and other support documentation;

(5) The verification that food, utilities, and other vendor payments are adequately supported by source documents;

(6) The certification that rent and lease expenses are supported by rental or lease agreements; and

(7) The certification that data related to paid patient days are supported by adequate census.

The Department may take either or both of the following actions to enforce compliance by a facility with this section, or to punish noncompliance:

(1) Seek a court order to enforce compliance;

(2) Suspend or revoke the facility's license, subject to the provisions of Chapter 150B."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

S.B. 502 **CHAPTER 90**

AN ACT TO ABOLISH THE "NO-WAKE" SPEED ZONE FOR MOTORBOATS IN TOPSAIL SOUND IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The "no-wake" speed zone established in that portion of Topsail Sound within 150 yards of Seafood World in Pender County, established by the Wildlife Resources Commission

pursuant to its authority under G.S. 75A-3 and G.S. 75A-15, is abolished, and the Wildlife Resources Commission shall not create a "no-wake" zone in Topsail Sound.

Sec. 2. The county or its designee shall remove all markers placed in Topsail Sound to implement the "no-wake" zone abolished in Section 1 of this act.

Sec. 3. This act applies only to Pender County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

S.B. 510 **CHAPTER 91**

AN ACT TO CHANGE THE PROCEDURE FOR CERTIFYING MUNICIPAL AD VALOREM TAX VALUATIONS IN WAKE COUNTY TO THE WAKE COUNTY BOARD OF ALCOHOLIC CONTROL.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 1098 of the 1949 Session Laws is amended by deleting the phrase "by the respective mayors of such municipalities;" and substituting the phrase "by the Wake County Assessor;".

Sec. 2. This act applies only to Wake County.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

S.B. 575 **CHAPTER 92**

AN ACT ADDING CASWELL COUNTY TO THOSE COUNTIES AUTHORIZED TO REGULATE TRESPASSING TO HUNT OR FISH ON PRIVATE LANDS BY LOCAL ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 651 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~Alamance~~ Alamance, Caswell, and Rockingham Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

S.B. 632 **CHAPTER 93**

AN ACT TO AMEND THE LAW CONCERNING THE GUILFORD COUNTY OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Section 9 of Chapter 988 of the 1983 Session Laws (Regular Session 1984) reads as rewritten:

"Sec. 9. Repeal of Levy. (a) The board of county commissioners may by resolution repeal the levy of the room occupancy tax in Guilford County, but no repeal of taxes levied under this act shall be effective until the end of the second succeeding fiscal year in which the repeal resolution was adopted.

(b) No liability for any tax levied under this act that attached prior to the date on which a levy is repealed is discharged as a result of the repeal, and no right to a refund of a tax that accrued prior to the effective date on which a levy is repealed may be denied as a result of the repeal."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

H.B. 321 **CHAPTER 94**

AN ACT TO EXEMPT REAL ESTATE ACQUIRED BY THE DEPARTMENT OF TRANSPORTATION FROM THE REQUIREMENT THAT IT BE APPRAISED BY LICENSED OR CERTIFIED APPRAISER WHEN THE ESTIMATED VALUE OF THE REAL ESTATE IS LESS THAN TEN THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 146-22.2 reads as rewritten:

"§ *146-22.2. Appraisal of property to be acquired by State.*

(a) Where an appraisal of real estate or an interest in real estate is required by law to be made before acquisition of the property by the State or an agency of the State, the appraisal shall be made by a real estate appraiser licensed or certified by the State under Article 5 of Chapter 93A of the General Statutes.

(b) The provisions of subsection (a) of this section shall not apply to appraisals of real estate or an interest in real estate made by personnel within the Department of Transportation when the appraisal is anticipated to be less than ten thousand dollars ($10,000). In the event that the real estate or interest in real estate is in fact appraised at

ten thousand dollars ($10,000) or more, the Department of Transportation must comply with the provisions of subsection (a) of this section."

Sec. 2. This act is effective upon ratification and expires July 1, 1993.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

H.B. 388 **CHAPTER 95**

AN ACT TO PROVIDE THAT SMALL DEBTS NEED NOT BE TURNED OVER TO THE ATTORNEY GENERAL FOR COLLECTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-86.11(e) reads as rewritten:

"(e) The receipt section of the uniform statewide plan promulgated by the Director of the Budget shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
   a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
   b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute;

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited;

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the ~~billing;~~ billing, except that a State agency need not turn over to the Attorney General unpaid billings of less than five hundred dollars ($500.00), or (for institutions where applicable) amounts owed by all patients which are less than the federally established deductible applicable to Part A of the Medicare program, and instead may handle these unpaid bills pursuant to agency debt collection procedures; and

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

H.B. 411 **CHAPTER 96**

AN ACT TO AUTHORIZE THE GOVERNOR'S COUNCIL ON PHYSICAL FITNESS AND HEALTH TO SANCTION THE STATE GAMES AND OTHER COMPETITIVE ATHLETIC EVENTS FOR WHICH SANCTIONING BY THE STATE IS REQUIRED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-33.40 reads as rewritten:

"*§ 130A-33.40. Governor's Council on Physical Fitness and Health -- creation; powers; duties.*

There is hereby created the Governor's Council on Physical Fitness and Health in the Department of Environment, Health, and Natural Resources. The Council shall have the following functions and duties:

(1) To promote interest in the area of physical fitness; to consider the need for new State programs in the field of physical fitness; to enlist the active support of individual citizens, professional and civic groups, amateur and professional athletes, voluntary organizations, State and local government agencies, private industry and business, and community recreation programs in efforts to improve the physical fitness and thereby the health of the citizens of North Carolina;

(2) To examine current programs of physical fitness available to the people of North Carolina, and to make recommendations to the Governor for coordination of programs to prevent duplication of such services; to support programs of physical fitness in the public school systems; to develop cooperative programs with medical, dental, and other groups; to maintain a liaison with government, private and other agencies concerning physical fitness programs; to stimulate research in the area of physical fitness; to sponsor physical fitness workshops, clinics, conferences, and other related activities pertaining to physical fitness throughout the State;

(3) To serve as an agency for recognizing outstanding developments, contributions, and achievements in physical fitness in North Carolina; ~~and~~

(3a) To serve as the North Carolina sanctioning body for the State Games and for other competitive athletic events for which sanctioning by the State is required; and

(4) ~~The Council shall~~ To make an annual report to the Governor and to the Secretary of Environment, Health, and Natural Resources, including therein suggestions and recommendations for the furtherance of the physical fitness of the people of North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

H.B. 676 **CHAPTER 97**

AN ACT CHANGING THE TIME NEWLY ELECTED MEMBERS OF THE HALIFAX COUNTY BOARD OF EDUCATION SHALL QUALIFY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37(d), those members of the Halifax County Board of Education elected in 1992 and in subsequent years shall qualify by taking the oath of office prescribed in Article VI, Section 7, of the Constitution at a meeting of the Board of Education held in July following the election.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 21st day of May, 1991.

S.B. 507 **CHAPTER 98**

AN ACT TO DELETE BOND REQUIREMENTS FOR SEED DEALERS AND FERTILIZER MANUFACTURERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.28(3) reads as rewritten:

"(3) A seed dealer or grower who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to report the quantity of seed sold and to pay the fees applicable under G.S. 106-277.28(1) in lieu of attaching an official North Carolina tag or stamp to each container of seeds weighing 10 pounds or more.

Upon granting authority, the Commissioner of Agriculture shall require each seed dealer or grower to keep such records as may be necessary to indicate accurately the quantity of seeds and container weights sold from each distribution point in the State. Such records shall be available to the Commissioner or his duly authorized representative at any and all reasonable hours for the purpose of making such examination as is necessary to verify the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights be false, the Commissioner may revoke the authority to use the reporting system. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a penalty of ten percent (10%) which shall be added to the inspection fee ~~due and the Commissioner shall have authority to deduct said amount due and penalty from the cash, securities or bond which has been deposited with the Department of Agriculture.~~ due.

~~In order to guarantee faithful performance with the provisions of this section, each seed dealer or grower, before being granted a permit to use the reporting system, shall deposit with the Commissioner cash in the amount of five hundred dollars ($500.00) or securities acceptable to the Commissioner of a value of at least five hundred dollars ($500.00) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina.~~"

Sec. 2. G.S. 106-671(b) reads as rewritten:

"(b) Reporting System. -- Each manufacturer, importer, jobber, firm, corporation or person who distributes commercial fertilizers in this State shall make application to the Commissioner for a permit to report the tonnage of commercial fertilizer sold and shall pay to the North Carolina Department of Agriculture an inspection fee of twenty-five cents (25¢) per ton. The Commissioner is authorized to require each such distributor to keep such records as may be necessary to indicate accurately the tonnage of commercial fertilizers

sold in the State, and as are satisfactory to the Commissioner. Such records shall be available to the Commissioner, or his duly authorized representative, at any and all reasonable hours for the purpose of making such examination as is necessary to verify the tonnage statement and the inspection fees paid. Each registrant shall report monthly the tonnage sold to non-registrants on forms furnished by the Commissioner. Such reports shall be made and inspection fees shall be due and payable monthly on the fifteenth of each month covering the tonnage and kind of commercial fertilizers sold during the past month. If the report is not filed and the inspection fee paid by the last day of the month it is due, the amount due shall bear a penalty of ten percent (10%), which shall be added to the inspection fee ~~due and shall constitute a debt and become the basis of judgment against the securities or bond which may be required.~~ due. If the report is not filed and the inspection fee paid within 60 days of the date due, or if the report or tonnage be false, the Commissioner may revoke the permit. ~~In order to guarantee faithful performance with the provisions of this subsection each manufacturer, importer, jobber, firm, corporation or person shall, before being granted a permit to use the reporting system, deposit with the Commissioner cash in the amount of one thousand dollars ($1,000) or securities acceptable to the Commissioner of a value of at least one thousand dollars ($1,000) or shall post with the Commissioner a surety bond in like amount, executed by some corporate surety company authorized to do business in North Carolina. The Commissioner shall approve all such securities and bonds before acceptance.~~"

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

S.B. 509 **CHAPTER 99**

AN ACT REGARDING DESIGNATION OF AGRICULTURAL PRODUCTS PRODUCERS' AGENCIES FOR THE PURPOSE OF FEDERAL COMMODITY ASSESSMENT PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. Article 50 of Chapter 106 of the General Statutes is amended by adding the following new section:

"*§ 106-555.1. Official State board for federal assessment programs; no subsequent referenda required.*

For the purpose of any federal commodity assessment program, the producers' agency certified by the Board of Agriculture pursuant to G.S. 106-555 shall be deemed to be the official State board for such

commodity. No subsequent referenda shall be required under this Article in order for such producers' agency to maintain its status as the official State board for the purposes of such federal commodity assessment program."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

S.B. 654 **CHAPTER 100**

AN ACT TO AUTHORIZE THE BOARD OF AGRICULTURE TO ADOPT RULES FOR THE STORAGE OF FERTILIZER MATERIALS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-673 reads as rewritten:

"*§ 106-673. Authority of Board of Agriculture to make rules and regulations.*

Because legislation with regard to commercial fertilizer sold or offered for sale in this State must be adopted [adapted] to complex conditions and standards involving numerous details with which the General Assembly cannot deal directly and in order to effectuate the purposes and policies of this Article, and in order to insure the manufacturer, distributor, and consumer of the correct quality and quantity of all commercial fertilizer sold or offered for sale in this State, the Board of Agriculture shall have the authority to make rules and regulations with respect to

(1) The maximum chlorine guarantee permitted for tobacco fertilizer;
(2) The maximum chlorine guarantee permitted in tobacco top dressers;
(3) Which grades of fertilizer may be branded top dressers;
(4) The labeling of the grade of fertilizer when such fertilizer is sold in plain or unbranded bags;
(5) The labeling requirements for all containers of liquid commercial fertilizer for direct application to the soil;
(6) The bag sizes which may be used in the sale of commercial fertilizer;
(7) The labeling requirements for packages containing a combination of any nonfertilizer material and mixed tobacco fertilizer;
(8) Registration and labeling requirements for grades and brands of fertilizer carrying any guarantee of boron; the

tolerance allowances for the percentage of boron in fertilizer mixtures;

(9) The required composition for boron-landplaster mixtures before they may be registered and sold for use on peanuts in this State; the labeling requirements for each container of such mixture;

(10) The monetary penalties assessed for excesses or deficiencies of boron and all other minor elements above or below the tolerances allowed;

(11) The registration and labeling of general crop grades and tobacco grades;

(12) The method, and the time limitations for the reporting to the Commissioner of Agriculture of the tonnage of each grade of fertilizer shipped to each destination in the State by each manufacturer or firm having fertilizer registered in this State;

(13) The required composition, before such mixtures may be registered and sold in this State, of fertilizer-pesticide, landplaster-pesticide, and fertilizer-landplaster-pesticide, when to be used for peanuts alone;

(14) The labeling and bag requirements of fertilizer-landplaster-pesticide mixtures;

(15) The standards and requirements which must be met before fertilizer-pesticide mixtures may be registered in this State. These requirements may include, but are not limited to, approval in North Carolina of both the pesticide and the fertilizer grades, approval of the mixture by the Board of Agriculture, and any labeling requirements;

(16) The standards and requirements which must be complied with before fertilizers-pesticides may, without registering the mixture, be mixed for direct application at the farmer's request;

(17) Requests for mixing any pesticide with fertilizer, for products not previously approved by the Board of Agriculture;

(18) Packaging requirements for fertilizer-pesticide mixtures sold either in bulk or in bags, such that dusting, spillage, sifting, or a loss of any fertilizer-pesticide mixture will not occur;

(19) The percentages of nitrogen required to be in nitrogen solutions, before such solutions may be registered and sold in this State;

(20) The labeling of fertilizer products to ascertain their compliance to the Fertilizer or Lime and Landplaster Law;

(21) Requesting substantiating data to back up claims made about a fertilizer product; registration may be denied if such data is not furnished;
(22) The denial of approval of the registration of fertilizer products when such products will not, when used as directed, supply deficient needs of a plant;
(23) Safety requirements for the movement, handling and storage of fluid fertilizers;
(24) Standards and requirements for equipment and tanks for handling liquid fertilizer;
(25) Refusing registration as a result of information or recommendations from the director of research stations;
(26) Establishing minimum guarantees permissible for registering secondary elements and ~~micro-nutrients.~~ micronutrients; and
(27) Establishing minimum standards for containment of fertilizer materials in storage to prevent contamination of groundwater and surface water."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

H.B. 300 **CHAPTER 101**

AN ACT TO PROVIDE THAT THERE SHALL BE NO INSURANCE POINTS ASSESSED FOR SPEEDING TEN MILES OR LESS OVER THE SPEED LIMIT FOR FIRST OFFENSE IN THREE YEARS WHERE SPEED LIMIT EXCEEDS FIFTY-FIVE MILES PER HOUR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-75(f) reads as rewritten:

"(f) The subclassification plan shall provide that with respect to a conviction for a 'violation of speeding 10 miles per hour or less over the speed limit' there shall be no premium surcharge nor any assessment of points unless there is a driving record consisting of a conviction or convictions for a moving traffic violation or violations, except for a prayer for judgment continued for any moving traffic violation, during the three years immediately preceding the date of application or the preparation of the renewal. The subclassification plan shall also provide that with respect to a prayer for judgment continued for any moving traffic violation, there shall be no premium surcharge nor any assessment of points unless the vehicle owner, principal operator, or any licensed operator in the owner's household

has a driving record consisting of a prayer or prayers for judgment continued for any moving traffic violation or violations during the three years immediately preceding the date of application or the preparation of the renewal. For the purpose of this subsection, a 'prayer for judgment continued' means a determination of guilt by a jury or a court though no sentence has been imposed. For the purpose of this subsection, a 'violation of speeding 10 miles per hour or less over the speed limit' does not include the offense of speeding in a school zone in excess of the posted school zone speed ~~limit nor any offense of speeding in excess of 65 miles per hour.~~ limit."

Sec. 2. This act becomes effective January 1, 1992 and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

H.B. 553 **CHAPTER 102**

AN ACT TO CREATE THE TOBACCO RESEARCH COMMISSION, AUTHORIZE A REFERENDUM OF TOBACCO GROWERS REGARDING ESTABLISHMENT OF A TOBACCO CHECKOFF FOR TOBACCO RESEARCH, AND TO MAKE CONFORMING CHANGES IN THE LAWS CONCERNING AGRICULTURAL RESEARCH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-568.2 reads as rewritten:

"*§ 106-568.2. Policy as to referendum and assessment.*

It is ~~further~~ declared to be in the public interest and highly advantageous to the economic development of the State that farmers, producers, and growers of agricultural commodities using commercial feed and/or fertilizers or their ingredients be permitted by referendum held among themselves to levy upon themselves an assessment of ten cents (10¢) per ton on mixed fertilizers, commercial feed, and their ingredients (except lime and land plaster) to provide funds through the Agricultural Foundation to supplement the established program of agricultural research and dissemination of research facts.

It is further declared to be in the public interest and highly advantageous to the economic development of the State that tobacco producers be permitted by referendum to levy upon themselves an assessment not to exceed ten cents (10¢) per hundred pounds of tobacco marketed to provide funds through the North Carolina Tobacco Research Commission for research and dissemination of research facts concerning tobacco."

Sec. 2. G.S. 106-568.3 reads as rewritten:

"§ *106-568.3. Action of Board of Agriculture on petition for ~~referendum.~~ referendum; creation of the Tobacco Research Commission.*

(a) The State Board of Agriculture, upon a petition being filed with it so requesting and signed by the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall examine such petition and upon finding that it complies with the provisions of this Article shall authorize the holding of a referendum as hereinafter set out and the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall thereupon be fully authorized and empowered to hold and conduct on the part of the producers and growers of the commodities herein mentioned a referendum on the question of whether or not such growers and producers shall levy upon themselves an assessment under and subject to and for the purposes stated in this Article. Provided, that the petition for a tobacco referendum shall be signed by and, once approved, shall authorize the holding of a referendum by the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated.

(b) There is hereby created a North Carolina Tobacco Research Commission within the Department of Agriculture. The Commission shall consist of the Commissioner of Agriculture, or his designee; the President of the North Carolina Farm Bureau Federation, Inc., or his designee; the President of the Tobacco Growers Association of North Carolina, Incorporated, or his designee; the Master of the North Carolina State Grange, or his designee; and, the President of the North Carolina Tobacco Foundation, Inc., or his designee."

Sec. 3. G.S. 106-568.4 reads as rewritten:

"§ *106-568.4. By whom referendum to be managed; announcement.*

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall arrange for and manage any referendum conducted under the provisions of this Article but shall, 60 days before the date upon which it is to be held, fix, determine, and publicly announce in each county the date, hours, and polling places in that county for voting in such referendum, the amount and basis proposed to be collected, the means by which such assessment shall be collected as authorized by the growers and producers, and the general purposes for which said funds so collected shall be applied. Provided, that the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers

Association of North Carolina, Incorporated, shall arrange for and manage any referendum for tobacco poundage assessments under the provisions of this Article."

Sec. 4. G.S. 106-568.6 reads as rewritten:

"§ *106-568.6. Determination and notice of date, area, hours, voting places, etc.*

The three organizations herein designated to hold such referendum shall fix the date, area, hours, voting places, rules and regulations with respect to the holding of such referendum and cause the same to be published in the press of the State at least 60 days before holding such referendum and shall certify such information to the State Commissioner of Agriculture and to each of the farm organizations of the State. Such notice, so published and furnished to the several agencies, shall contain, in addition to the other information herein required, a statement of the amount of annual assessment proposed to be levied, and the purposes for which such assessment shall be applied. Provided, that the four organizations designated to hold the referendum for tobacco poundage assessments shall perform the functions set forth in this section."

Sec. 5. G.S. 106-568.7 reads as rewritten:

"§ *106-568.7. Preparation and distribution of ballots; poll holders; canvass and announcement of results.*

The governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall prepare and distribute in advance of such referendum all necessary ballots and shall under rules and regulations, adopted and promulgated by the organizations holding such referendum, arrange for the necessary poll holders and shall, within 10 days after the date of such referendum, canvass and publicly declare the results thereof. Provided, that for the tobacco poundage assessment referendum, the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and the Tobacco Growers Association of North Carolina, Incorporated, shall perform the functions set forth in this section."

Sec. 6. G.S. 106-568.8 reads as rewritten:

"§ *106-568.8. Collection and disposition of assessment; report of receipts and disbursements; audit.*

(a) Fertilizer and feed assessments. In the event two thirds or more of the eligible farmers and producers participating in said referendum vote in favor of such assessment, then said assessment shall be collected for a period of six years under rules, regulations, and methods as provided for in this Article. The assessments shall be added to the wholesale purchase price of each ton of fertilizer,

commercial feed, and/or their ingredients (except lime and land plaster) by the manufacturer of said fertilizer and feed. The assessment so collected shall be paid by the manufacturer into the hands of the North Carolina Commissioner of Agriculture on the same tonnage and at the same time and in the same manner as prescribed for the reporting of the inspection tax on commercial feeds and fertilizers as prescribed by G.S. 106-284.40 and 106-671. The Commissioner shall then remit said ten cents (10¢) per ton for the total tonnage as reported by all manufacturers of commercial feeds, fertilizers, and their ingredients to the treasurer of the North Carolina Agricultural Foundation, Inc., who shall disburse such funds for the purposes herein enumerated and not inconsistent with provisions contained in the charter and bylaws of the North Carolina Agricultural Foundation, Inc. Signed copies of the receipts for such remittances made by the Commissioner to the treasurer of the North Carolina Agricultural Foundation, Inc., shall be furnished the Commissioner of Agriculture, the North Carolina Farm Bureau Federation, and the North Carolina State Grange. The treasurer of the North Carolina Agricultural Foundation, Inc., shall make an annual report at each annual meeting of the Foundation directors of total receipts and disbursements for the year and shall file a copy of said report with the Commissioner of Agriculture and shall make available a copy of said report for publication.

It shall be the duty of the Commissioner of Agriculture to audit and check the remittances of ten cents (10¢) per ton by the manufacturer to the Commissioner in the same manner and at the same time as audits and checks are made of remittances of the inspection tax on commercial feeds and fertilizers.

Any commercial feed excluded from the payment of the inspection fee required by G.S. 106-284.40 shall nevertheless be subject to the assessment provided for by this Article and to quarterly tonnage reports to the Department of Agriculture as provided for in G.S. 106-284.40(c).

(b) Tobacco Poundage Assessments. In the event two-thirds or more of the eligible farmers and producers participating in the tobacco referendum vote in favor of the tobacco poundage assessment authorized under this Article, then said assessment shall be collected for a period of six years under rules, regulations, and methods adopted by the North Carolina Tobacco Research Commission. The North Carolina Tobacco Research Commission is exempt from the provisions of Chapter 150B of the General Statutes.

The assessments collected shall be remitted to the Department of Agriculture to be expended under the direction of the Tobacco Research Commission for research and dissemination of research facts

concerning tobacco. Any person that receives assessment funds from the Tobacco Research Commission shall file quarterly written reports with the Tobacco Research Commission on the receipt and expenditure of assessment funds."

Sec. 7. G.S. 106-568.9 reads as rewritten:

"§ *106-568.9. Refunds to farmers.*

In the event such a referendum is carried in the affirmative and the assessment is levied and collected as herein provided and under the regulations to be promulgated by the duly certified agencies conducting the same, any farmer upon whom and against whom any such assessment shall have been added and collected under the provisions of this Article, if dissatisfied with the said assessment, shall have the right to demand of and receive from the treasurer of said North Carolina Agricultural Foundation, Inc., a refund of such amount so collected from such farmer or producer provided such demand for refund is made in writing within 30 days from the date of which said assessment is collected from such farmer or producer. Provided, that the Department of Agriculture shall make tobacco poundage assessment refunds to tobacco farmers when such demand for refund is made in writing by the tobacco farmer within 30 days of the close of the marketing season."

Sec. 8. G.S. 106-568.10 reads as rewritten:

"§ *106-568.10. Subsequent referenda; continuation of assessment.*

If the assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, the North Carolina State Grange, and the North Carolina Agricultural Foundation, Inc., shall have full power and authority to call another referendum for the purposes herein set out in the next succeeding year on the question of the annual assessment for six years. In the event the assessment carried in a referendum by two thirds or more of the eligible farmers participating therein, such assessment shall be levied annually for the six years set forth in the call for such referendum and a new referendum may be called and conducted during the sixth year of such period on the question of whether or not such assessment shall be continued for the next ensuing six years. Provided, that if the tobacco poundage assessment is defeated in the referendum, the governing boards of the North Carolina Farm Bureau Federation, Inc., the North Carolina State Grange, the North Carolina Tobacco Foundation, Inc., and Tobacco Growers Association of North Carolina, Incorporated, may call another referendum in the next succeeding year on the question of the annual assessment for six years. If the tobacco assessment carried in a referendum by two-thirds or more of the eligible farmers participating therein, the assessment shall be levied annually for the six years set forth in the

call for the referendum and a new referendum may be called and conducted during the sixth year of the period on the question of whether or not the assessment shall be continued for the next ensuing six years."

Sec. 9. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 22nd day of May, 1991.

S.B. 11 **CHAPTER 103**

AN ACT TO REPEAL THE SUNSET PROVISION OF THE ADMINISTRATIVE PROCEDURE ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 19 of Chapter 746 of the 1985 Session Laws is amended by deleting the sentence that reads: "This act shall expire January 1, 1992 and shall not be effective on or after that date."

Sec. 2. This act shall not become effective until funds have been appropriated to implement this act.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 460 **CHAPTER 104**

AN ACT TO AUTHORIZE THE WILDLIFE RESOURCES COMMISSION TO ISSUE PROCLAMATIONS SUSPENDING OR EXTENDING THE HOOK-AND-LINE SEASON FOR STRIPED BASS FISHING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-292 is amended by adding a new subsection to read:

"(c1) The Wildlife Resources Commission is authorized to issue proclamations suspending or extending the hook-and-line season for striped bass in the inland and joint waters of coastal rivers and their tributaries, and the Commission may delegate this authority to the Executive Director. Each proclamation shall state the hour and date upon which it becomes effective, and shall be issued at least 48 hours prior to the effective date and time. A permanent file of the text of all proclamations shall be maintained in the office of the Executive Director. Certified copies of proclamations are entitled to judicial notice in any civil or criminal proceeding.

The Executive Director shall make reasonable effort to give notice of the terms of any proclamation to persons who may be affected by it.

This effort shall include press releases to communications media, posting of notices at boating access areas and other places where persons affected may gather, personal communication by agents of the Wildlife Resources Commission, and other measures designed to reach persons who may be affected. Proclamations under this subsection shall remain in force until rescinded following the same procedure established for enactment."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 492 **CHAPTER 105**

AN ACT TO CHANGE THE DATE OF THE NONPARTISAN AVERY COUNTY SCHOOL BOARD ELECTION FROM MAY TO NOVEMBER.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 146, Session Laws of 1973 is rewritten to read:

"Sec. 2. Beginning in 1992 and biennially thereafter, the election for members of the Avery County Board of Education shall be held at the same time as the general election for county officers, and shall be conducted on a nonpartisan plurality basis, with the results determined in accordance with G.S. 163-292. Candidates shall file notice of candidacy not earlier than 12:00 noon on the first Friday in July, and not later than 12:00 noon on the first Friday in August."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 493 **CHAPTER 106**

AN ACT TO CHANGE THE PAY DATE FOR CERTAIN EMPLOYEES OF THE KINGS MOUNTAIN SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 422 of the 1981 Session Laws is repealed, as it applies to the Kings Mountain School Administrative Unit.

Sec. 2. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, all 10-month employees of the Kings Mountain School Administrative Unit, except for bus drivers and cafeteria workers, shall be paid on the fifteenth day of each month; all other employees of the Kings Mountain School

Administrative Unit shall be paid on the last day of each month. Nothing in this section shall have the effect of changing the rate of pay for any employee of the Kings Mountain School Administrative Unit.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 520 **CHAPTER 107**

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM TO PROVIDE FOR IMPROVEMENTS TO REAL PROPERTY BY THE SELLER OR LESSOR OF THE PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is amended by adding a new section to read:

"Section 84.3. Acquisition of Real Property with Improvements by Seller or Lessor.

(a) The City may enter into contracts for the purchase or lease of buildings or other structures in which the seller or lessor shall be responsible for carrying out or providing for: (i) reconstruction, repair, or renovation of the property; (ii) construction of any additions or improvements to the property; and (iii) purchase of apparatus, supplies, materials, or equipment for the property. Such contracts shall include such provisions as the City Council deems sufficient to assure that the work is performed and items purchased at a reasonable price. The provisions of Article 8 of Chapter 143 of the General Statutes and Article 3 of Chapter 44A of the General Statutes shall not apply to such contracts.

(b) The authority granted by this section is in addition to, and not in derogation of, any other authority granted to the City by this Charter or any other law."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 553 **CHAPTER 108**

AN ACT TO PROHIBIT HUNTING ON OR ACROSS THE RIGHT-OF-WAY OF PUBLIC ROADS OR HIGHWAYS IN A PORTION OF FRANKLIN COUNTY AND TO REQUIRE WRITTEN

PERMISSION BEFORE HUNTING ON OR ACROSS THE RIGHT-OF-WAY OF PUBLIC ROADS OR HIGHWAYS IN THE REMAINDER OF FRANKLIN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 484 of the 1969 Session Laws is repealed.

Sec. 2. It is unlawful to hunt, take, or kill any wild animal or wild bird from, on, or across the right-of-way of a public road or highway, or to discharge a firearm from, on, or across the right-of-way of a public road or highway, within that portion of Franklin County bounded on the north beginning at the Tar River at the Granville County line east to U.S. Highway 1, then south along U.S. Highway 1 to the intersection of U.S. Highway 1 and N.C. Highway 56, then east along N.C. Highway 56 to the intersection of N.C. Highway 56 and U.S. Highway 401, then north along U.S. Highway 401 to the intersection of U.S. Highway 401 and N.C. Highway 39, then south along N.C. Highway 39 to the intersection of N.C. Highway 39 and N.C. Highway 98, then east along N.C. Highway 98 to the Nash County line.

Sec. 3. It is unlawful to hunt, take, or kill a wild animal or wild bird from, on, or across the right-of-way of any public road or highway, or to discharge a firearm from, on, or across the right-of-way of a public road or highway, within that portion of Franklin County outside the boundaries described in Section 2 of this act, without first securing the written permission of the owner of the land which abuts the public road or highway.

Sec. 4. Violation of this act is a misdemeanor punishable by a fine of not less than one hundred dollars ($100.00) or by imprisonment not to exceed 30 days, or both, in the discretion of the court.

Sec. 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 6. This act applies only to Franklin County.

Sec. 7. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 763 **CHAPTER 109**

AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY MAY TAKE A VOLUNTARY DISMISSAL IN A DEFERRED PROSECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-931(a) reads as rewritten:

"(a) Except as provided in G.S. 20-138.4, the prosecutor may dismiss any charges stated in a criminal pleading including those deferred for prosecution by entering an oral dismissal in open court before or during the trial, or by filing a written dismissal with the clerk at any time. The clerk must record the dismissal entered by the prosecutor and note in the case file whether a jury has been impaneled or evidence has been introduced."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

H.B. 51 **CHAPTER 110**

AN ACT TO CONSOLIDATE AND REVISE STATUTES CONCERNING THE PROPERTY TAX COMMISSION, TO REPEAL UNNECESSARY DUTIES OF THE DEPARTMENT OF REVENUE, TO REPEAL THE REQUIREMENT THAT ALL OF THE EMPLOYEES IN THE DEPARTMENT OF REVENUE TAKE AN OATH, AND TO CONFORM THE OATHS REQUIRED BY THE OFFICEHOLDERS IN THE DEPARTMENT OF REVENUE TO THE OATH REQUIRED BY THE CONSTITUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-288 reads as rewritten:

"§ *105-288.* ~~*Functions of Department and*~~ *Property Tax* ~~*Commission; oath; expenses.*~~ *Commission.*

(a) Creation and Membership. -- The Property Tax Commission is created. It consists of five members, three of whom are appointed by the Governor and two of whom are appointed by the General Assembly. Of the two appointments by the General Assembly, one shall be made upon the recommendation of the Speaker of the House of Representatives and the other shall be made upon the recommendation of the President of the Senate. The terms of the members appointed by the Governor and of the member appointed upon the recommendation of the President of the Senate are for four years. Of the members appointed for four-year terms, two expire on June 30 of each odd-numbered year. The term of the member appointed upon the recommendation of the Speaker of the House of Representatives is for two years and it expires on June 30 of each odd-numbered year. The General Assembly shall make its appointments in accordance with G.S. 120-121 and shall fill a vacancy in

accordance with G.S. 120-122. A vacancy occurs on the Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Governor may remove any member for misfeasance, malfeasance, or nonfeasance.

The Commission shall have a chair and a vice-chair. The Governor shall designate one of the Commission members as the chair, to serve at the pleasure of the Governor. The members of the Commission shall elect a vice-chair from among its membership. The vice-chair serves until the member's regularly appointed term expires.

~~Duties of the Department of Revenue:~~

~~(1) The Department shall exercise general and specific supervision over the valuation and taxation of property by counties and municipalities throughout the State.~~

~~(2) The Department is responsible for appraising the property of public service companies as defined in G.S. 105-333.~~

(b) Duties. -- The Property Tax Commission constitutes the State Board of Equalization and Review for the valuation and taxation of property in the State. It shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333. The Commission may adopt rules needed to fulfill its duties.

~~Duties of the Property Tax Commission:~~

~~(1) The Commission is constituted as the State board of equalization and review for the valuation and taxation of property in the State.~~

~~(2) The Commission shall hear appeals from the appraisal and assessment of the property of public service companies as defined in G.S. 105-333.~~

(c) Oath. -- Each member of the Property Tax Commission, as the appointed holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following sentence added to it: 'That I will not allow my actions as a member of the Property Tax Commission to be influenced by personal or political friendships or obligations.' ~~the Secretary of Revenue, and the employees of the Department assigned duties and responsibilities enumerated in this Chapter shall take and subscribe the oath set up below and file it with the Secretary of State:~~

~~"I, ..., do solemnly swear, or affirm, that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office and that I will not allow my actions in such office to be influenced by personal or political friendships or obligations, so help me, God."~~

~~.....~~
~~Signature~~

(d) Expenses. -- The members of the Property Tax Commission shall receive travel and subsistence expenses in accordance with G.S. 138-5 and a salary of two hundred dollars ($200.00) a day when hearing cases. The Secretary of Revenue shall supply all the clerical and other services required by the Commission. All expenses of the ~~Commission,~~ Commission and the Department of Revenue in performing the duties enumerated in this Article shall be paid from funds appropriated out of revenue derived from the tax on intangible personal property as provided by G.S. 105-213.

(e) Meetings. -- The Property Tax Commission shall meet at least once in each quarter and may hold special meetings at any time and place within the State at the call of the Chair or upon the written request of at least three members. At least 15 days' notice shall be given to each member with respect to each special meeting. A majority of the Commission members constitutes a quorum for the transaction of business."

Sec. 2. G.S. 105-289(a) reads as rewritten:

"(a) It shall be the duty of the Department of Revenue:

(1) To discharge the duties prescribed by law and ~~to take such action and to do such things as may be needful and proper~~ to enforce the provisions of this Subchapter.

(2) To exercise general and specific supervision over the valuation and taxation of property by taxing units throughout the State. ~~To report in reasonably durable form to the General Assembly at each regular session or at such other times as the General Assembly may direct:~~

~~a. The proceedings of the Property Tax Commission during the preceding biennium.~~

~~b. Recommendations concerning revision of this Subchapter and information concerning the public revenues that may be required by the General Assembly or that the Commission deems expedient and wise.~~

(3) To appraise the property of public service companies. ~~To report to the Governor on or before the first day of January each year:~~

~~a. The proceedings of the Commission during the preceding year.~~

~~b. Any recommendations the Commission desires to submit with respect to any matter relating to this Subchapter.~~

(4) To keep full and accurate records of the Commission's official proceedings.

(5) To prepare and distribute annually to each assessor a manual that establishes five expected net income per acre ranges for agricultural land, horticultural land, and forestland, and establishes a method for appraising nonproductive land as a percentage of the lowest use-value established for productive land. The high and low net income amount in each range may differ by no more than fifteen dollars ($15.00). The basis for establishing each range shall be soil productivity.

For agricultural land, the expected net income per acre ranges shall be based on the actual yields and prices of corn and soybeans over a period of at least the five previous years, and the actual fixed and variable costs, including an imputed management cost, incurred in growing corn and soybeans over the same period of time. The manual shall contain recommended adjustments to the net income per acre ranges for the growing of crops subject to acreage or poundage allotments.

Expected net income per acre ranges shall be similarly established for horticultural land and forestland, using typical horticultural or forest products in various growing regions of the State instead of corn and soybeans.

(6) To establish requirements for horticultural land, used to produce evergreens intended for use as Christmas trees, in lieu of a gross income requirement until evergreens are harvested from the land, and to establish a gross income requirement for this type horticultural land, that differs from the income requirement for other horticultural land, when evergreens are harvested from the land."

Sec. 3. G.S. 143B-222 through G.S. 143B-225 are repealed.

Sec. 4. G.S. 105-295 reads as rewritten:

"*§ 105-295. Oath of office for assessor.* ~~*Before entering upon his duties, the assessor shall take and subscribe the following oath and file it with the clerk of the board of county commissioners:*~~

~~I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as assessor of ..... County, North Carolina, and that I will not allow my actions as assessor to be influenced by personal or political friendships or obligations, so help me God.~~

~~.....~~

~~(Signature)~~

The assessor, as the holder of an appointed office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with

the following sentence added to it: 'That I will not allow my actions as assessor to be influenced by personal or political friendships or obligations.' The oath must be filed with the clerk of the board of county commissioners."

Sec. 5. G.S. 105-322(c) reads as rewritten:

"(c) Oath. -- ~~Before entering upon his duties, each member of the board of equalization and review shall take and subscribe the following oath and file it with the clerk of the board of county commissioners:~~

~~I, ..., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as a member of the Board of Equalization and Review of ..... County, North Carolina, and that I will not allow my actions as a member of the Board of Equalization and Review to be influenced by personal or political friendships or obligations, so help me God.~~

~~.....~~

~~(Signature)~~

Each member of the Board of Equalization and Review shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following sentence added to it: 'That I will not allow my actions as a member of the Board of Equalization and Review to be influenced by personal or political friendships or obligations.' The oath must be filed with the clerk of the board of county commissioners."

Sec. 6. G.S. 105-349(g) reads as rewritten:

"(g) Oath. -- ~~Every tax collector and deputy tax collector shall take and subscribe the oath set out below and file it with the clerk of the governing body of the taxing unit:~~

~~I,....., do solemnly swear (or affirm) that I will support and maintain the Constitution and laws of the United States, and the Constitution and laws of North Carolina not inconsistent therewith, and that I will faithfully discharge the duties of my office as (deputy) tax collector of the County (City, Town, or other appropriate unit of local government) of ..... North Carolina, and that I will not allow my actions as tax collector to be influenced by personal or political friendships or obligations, so help me God.~~

~~.....~~

~~(Signature)~~

Every tax collector and deputy tax collector, as the holder of an office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following sentence added to it: 'That I will not allow my actions as tax collector to be influenced by personal or

political friendships or obligations.' The oath must be filed with the clerk of the governing body of the taxing unit."

Sec. 7. This act is effective upon ratification. It does not affect the terms of the current members of the Property Tax Commission.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

H.B. 249 **CHAPTER 111**

AN ACT TO EXTEND BY TWO YEARS THE PERIOD DURING WHICH A SMALL BUSINESS CONCERN MAY REMAIN IN AN INCUBATOR FACILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-471.4(e) reads as rewritten:

"(e) The incubator facility and any improvements shall be owned by a county, city, political subdivision, nonprofit corporation, or charitable or educational trust, but may be leased to the grant recipient. Small business concern residents of the facility may be provided secretarial and other support facilities and utilities for which the corporation may charge them a part or all of the cost. No small business concern may remain in the facility for more than two years, ~~provided that~~ except that if the owner of the property determines that it is in the best interest of the economic vitality of the owner, lessor and lessee, or it is economically and physically beneficial to the owner, lessor and lessee, the lease may be extended for a period ~~not to exceed one additional year,~~ of up to one year and, if the North Carolina Technological Development Authority concurs, may be further extended for an additional period of up to two years. Notwithstanding any other provision of law, the State shall not be liable for any act or failure to act of any organization granted funds under this Part, or any small business concern benefiting from the incubator facilities program."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

H.B. 299 **CHAPTER 112**

AN ACT TO SIMPLIFY THE DESIGNATION OF TRUCK ROUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-116(h) reads as rewritten:

"(h) Whenever there exist two highways of the ~~primary~~ State highway system of approximately the same distance between two or more points, the Department of Transportation ~~shall have authority~~ may, when in the opinion of the Department of Transportation, based upon engineering and traffic investigation, safety will be promoted or the public interest will be ~~served thereby, to~~ served, designate one of ~~said~~ the highways the 'truck route' between ~~said~~ those points, and to prohibit the use of the other highway by heavy trucks or other vehicles of a gross vehicle weight or axle load limit in excess of a designated maximum. In such instances the highways ~~so~~ selected for heavy vehicle traffic shall be ~~so~~ designated as 'truck routes' by signs conspicuously ~~posted thereon,~~ posted, and the highways upon which heavy vehicle traffic is prohibited shall likewise be ~~so~~ designated by signs conspicuously posted ~~thereon~~ showing the maximum gross vehicle weight or axle load limits authorized for ~~said~~ those highways. The operation of any vehicle whose gross vehicle weight or axle load exceeds the maximum limits shown on ~~such~~ signs over the posted highway ~~thus posted~~ shall constitute a misdemeanor: Provided, that nothing ~~herein~~ in this subsection shall prohibit a truck or other motor vehicle whose gross vehicle weight or axle load exceeds that prescribed for ~~such~~ those highways from using ~~such highway~~ them when ~~the~~ its destination ~~of such vehicle~~ is located solely upon ~~said~~ that highway, road or street: Provided, further, that nothing ~~herein~~ in this subsection shall prohibit passenger vehicles or other light vehicles from using any highways ~~so~~ designated for heavy truck traffic."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

H.B. 331 **CHAPTER 113**

AN ACT TO REQUIRE TWO REAR-VISION MIRRORS ON CERTAIN TRUCKS, BUSES, AND TRUCK TRACTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-117.1 reads as rewritten:

"§ *20-117.1.* ~~*Equipment required on all semitrailers operated by contract carriers or common carriers of property.*~~ *Requirements for mirrors and fuel container.*

(a) Rear-Vision ~~Mirror.~~ Mirrors. -- ~~Every tractor shall be equipped with at least one rear-vision mirror, firmly attached to the motor vehicle and so located as to reflect to the driver a view of the highway to the rear.~~ Every bus, truck, and truck tractor with a GVWR of 10,001 pounds or more shall be equipped with two rear-vision

mirrors, one at each side, firmly attached to the outside of the motor vehicle, and located as to reflect to the driver a view of the highway to the rear and along both sides of the vehicle. Only one outside mirror shall be required, on the driver's side, on trucks which are so constructed that the driver also has a view to the rear by means of an interior mirror. In driveaway-towaway operations, driven vehicle shall have at least one mirror furnishing a clear view to the rear, and if the interior mirror does not provide the clear view, an additional mirror shall be attached to the left side of the driven vehicle to provide the clear view to the rear.

(b) Fuel Container Not to Project. -- No part of any fuel tank or container or intake pipe shall project beyond the sides of the motor vehicle."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

H.B. 849 **CHAPTER 114**

AN ACT TO REQUIRE REGISTERS OF DEEDS TO RECORD AS SEPARATE INSTRUMENTS ALL SUBSEQUENT ENTRIES REGARDING DEEDS OF TRUST, MORTGAGES, AND OTHER INSTRUMENTS AS SEPARATE INSTRUMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-14.1 reads as rewritten:

"*§ 161-14.1. Recording subsequent entries as separate ~~instruments in counties using microfilm.~~ instruments.*

~~In any county in which instruments are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments,~~ In all cases in which the register of deeds is authorized or directed by law to make a subsequent entry upon the margin of the record of a deed of trust, mortgage, or other instrument, the register of deeds ~~may,~~ shall, except as provided in G.S. 45-37.2 and 45-38, record all subsequent entries as separate instruments. Such instruments shall contain the information and notations required by law for the appropriate marginal entry, a reference by book and page number to the record of the instrument modified, and the date of recording the subsequent modifying instrument. There shall also be entered in the alphabetical indexes kept by the register of deeds, opposite the name of each indexed party to the original instrument, a reference by book and page to the record of the subsequent modifying

instrument. In the recording of satisfactions or foreclosures of deeds of trust and mortgages, the register of deeds shall comply with the provisions of G.S. 45-37.2 and 45-38. Whenever it is practical to do so, the register of deeds may continue making marginal notations in addition to making the recordation required by this section."

Sec. 2. G.S. 45-37.2 reads as rewritten:

"§ *45-37.2. Recording satisfactions of deeds of trust and ~~mortgages in counties using microfilm.~~ mortgages.*

~~In any county in which deeds of trust and mortgages are recorded in the office of the register of deeds by a microphotographic process or by any other method or process which renders impractical or impossible the subsequent entering of marginal notations upon the records of instruments, the~~ The register of deeds shall record the satisfaction and cancel the record of ~~each such instrument~~ every deed of trust or mortgage satisfied by recording a ~~notice~~ record of satisfaction which shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, the appropriate entry of satisfaction as provided in G.S. 45-37, a reference by book and page number to the record of the instrument satisfied, and the date of recording the notice of satisfaction. The fee for recording a ~~notice~~ record of satisfaction shall be the fee for recording instruments in general provided in G.S. 161-10(a)(1). Whenever it is practical to do so, the register of deeds may make a marginal notation in addition to making the recordation required by this section."

Sec. 3. G.S. 45-38 reads as rewritten:

"§ *45-38. ~~Entry or recording~~ Recording of foreclosure.*

In case of foreclosure of any deed of trust, or mortgage, the trustee or mortgagee shall record a notice of foreclosure and, whenever it is practical to do so, may also enter upon the margin of the record ~~thereof~~ of the deed of trust or mortgage of the fact that such foreclosure and the date when, and the person to whom, a conveyance was made by reason ~~thereof.~~ of the foreclosure. In the event the entire obligation secured by a mortgage or deed of trust is satisfied by a sale of only a part of the property embraced within the terms of the mortgage or deed of trust, the trustee or mortgagee shall ~~make an additional notation as to~~ indicate in the notice of foreclosure which property was sold and which was not ~~sold.~~ sold, and may make an additional notation indicating the same, whenever practical.

~~Provided, that in counties in which deeds of trust and mortgages are recorded in the office of the register of deeds by a microphotographic process or by any process or method which renders impractical or impossible the subsequent entering of marginal notations upon the~~

~~records of instruments, the register of deeds shall record the foreclosure of each deed of trust or mortgage foreclosed by recording a notice of foreclosure which~~ A notice of foreclosure shall consist of a separate instrument, or that part of the original deed of trust or mortgage rerecorded, reciting the information required hereinabove, the names of all parties to the original instrument, the amount of the obligation secured, a reference by book and page number to the record of the instrument foreclosed, and the date of recording the notice of foreclosure."

Sec. 4. G.S. 45-37 reads as rewritten:

"*§ 45-37. Discharge of record of mortgages, deeds of trust and other instruments.*

(a) Subject to the provisions of G.S. 45-73 relating to secured instruments which secure future advances, any deed of trust or mortgage or other instrument intended to secure the payment of money or the performance of any other obligation registered as required by law may be discharged and released of record in the following manner:

(1) By acknowledgment of the satisfaction of the provisions of such deed of trust, mortgage or other instrument in the presence of the register of deeds by:
   a. The trustee,
   b. The mortgagee,
   c. The legal representative of a trustee or mortgagee, or
   d. A duly authorized agent or attorney of any of the above.

   Upon acknowledgment of satisfaction, the register of deeds shall record a record of satisfaction as described in G.S. 45-37.2, and may forthwith make upon the margin of the record of such deed of trust, mortgage or other instrument an entry of such acknowledgement of satisfaction which shall be signed by the trustee, mortgagee, legal representative, agent or attorney and witnessed by the register of deeds, who shall affix his name thereto.

(2) By exhibition of any deed of trust, mortgage or other instrument accompanied with the bond, note, or other instrument thereby secured to the register of deeds, with the endorsement of payment and satisfaction appearing thereon by:
   a. The obligee,
   b. The mortgagee,
   c. The trustee,
   d. An assignee of the obligee, mortgagee, or trustee, or
   e. Any chartered banking institution, or savings and loan association, national or state, or credit union, qualified to

do business in and having an office in the State of North Carolina, when so endorsed in the name of the institution by an officer thereof.

Upon exhibition of the instruments, the register of deeds shall cancel the mortgage, deed of trust or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the record. The person so claiming satisfaction, performance or discharge of the debt or other obligation may retain possession of all of the instruments exhibited. The exhibition of the mortgage, deed of trust or other instrument alone to the register of deeds, with endorsement of payment, satisfaction, performance or discharge, shall be sufficient if the mortgage, deed of trust or other instrument itself sets forth the obligation secured or the performance of any other obligation and does not call for or recite any note, bond or other instrument secured by it. The register of deeds may require the person exhibiting the instruments for cancellation to furnish him an acknowledgment of cancellation of the mortgage, deed of trust or other instrument for the purpose of showing upon whose request and exhibition the mortgage, deed of trust or other instrument was canceled.

(3) By exhibiting to the register of deeds by:

a. The grantor,

b. The mortgagor, or

c. An agent, attorney or successor in title of the grantor or mortgagor

of any mortgage, deed of trust or other instrument intended to secure the payment of money or the performance of any other obligation, together with the bond, note or other instrument secured thereby, or by exhibition of the mortgage, deed of trust or other instrument alone if such instrument itself sets forth the obligation secured or other obligation to be performed and does not call for or recite any note, bond or other instrument secured by it, if at the time of exhibition, all such instruments are more than 10 years old counting from the maturity date of the last obligation secured. If the instrument or instruments so exhibited have an endorsement of partial payment, satisfaction, performance or discharge within the said period of 10 years, the period of 10 years shall be counted from the date of the most recent endorsement.

The register of deeds shall cancel the mortgage, deed of trust, or other instrument by recording a record of

satisfaction as described in G.S. 45-37.2, and may make proper entry of cancellation and satisfaction of said instrument on the margin of the record where the same is recorded, whether there be any such entries on the original papers or not.

(4) By exhibition to the register of deeds of any deed of trust given to secure the bearer or holder of any negotiable instruments transferable by delivery, together with all the evidences of indebtedness secured thereby, marked paid and satisfied in full and signed by the bearer or holder thereof.

Upon exhibition of the deed of trust, and the evidences of indebtedness properly marked, the register of deeds shall cancel such deed of trust by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction upon the margin of the record, which record, or entry if made, shall be valid and binding upon all persons, if no person rightfully entitled to the deed of trust or evidences of indebtedness has previously notified the register of deeds in writing of the loss or theft of the instrument or evidences of indebtedness and has caused the register of deeds to record the notice or loss or ~~theft on the margin of the record of the deed of trust.~~ theft in a separate document, as required by G.S. 161-14.1.

Upon receipt of written notice of loss or theft of the deed of trust or evidences of indebtedness the register of deeds shall record a record of satisfaction, as described in G.S. 45-37.2, which in this case shall consist of a rerecording of the record of the deed of trust containing the marginal entry and may make on the record of the deed of trust concerned a marginal entry in writing thereof, with the date of receipt of the notice. The deed of trust shall not be canceled after such recording of a record of satisfaction or marginal entry until the ownership of said instrument shall have been lawfully determined. Nothing in this subdivision (4) shall be construed to impair the negotiability of any instrument otherwise properly negotiable, nor to impair the rights of any innocent purchaser for value thereof.

Every entry of acknowledgment of satisfaction or of satisfaction made or witnessed by the register of deeds as provided in subdivision (a)(1) shall operate and have the same effect to release and discharge all the interest of such trustee, mortgagee or representative in such deed or mortgage as if a deed of release or reconveyance thereof had been duly executed and recorded.

(5) By exhibition to the register of deeds of a notice of satisfaction of a deed of trust, mortgage, or other instrument which has been acknowledged by the trustee or the mortgagee before an officer authorized to take acknowledgments. The notice of satisfaction shall be substantially in the form set out in G.S. 47-46.1. The notice of satisfaction shall recite the names of all parties to the original instrument, the amount of the obligation secured, the date of satisfaction of the obligation, and a reference by book and page number to the record of the instrument satisfied.

Upon exhibition of the notice of satisfaction and payment of the appropriate fee provided in G.S. 161-10, the register of deeds shall record the notice of satisfaction and cancel the deed of trust, mortgage, or other instrument by recording a record of satisfaction as described in G.S. 45-37.2, and may make an entry of satisfaction on the margin of the ~~record or as provided in G.S. 45-37.2,~~ record.

(b) It shall be conclusively presumed that the conditions of any deed of trust, mortgage or other instrument securing the payment of money or securing the performance of any other obligation or obligations have been complied with or the debts secured thereby paid or obligations performed, as against creditors or purchasers for valuable consideration from the mortgagor or grantor, from and after the expiration of 15 years from whichever of the following occurs last:

(1) The date when the conditions of such instrument were required by its terms to have been performed, or

(2) The date of maturity of the last installment of debt or interest secured thereby;

provided that the holder of the indebtedness secured by such instrument or party secured by any provision thereof may file an affidavit with the register of deeds which affidavit shall specifically state:

(1) The amount of debt unpaid, which is secured by said instrument; or

(2) In what respect any other condition thereof shall not have been complied with; or

may record a separate instrument ~~make on the margin of the record of the instrument a notation~~ signed by the holder or party secured and witnessed by the register of deeds stating:

(1) Any payments that have been made on the indebtedness or other obligation secured by such instrument including the date and amount of payments and

(2) The amount still due or obligations not performed under the instrument.

Whenever practical, the register of deeds may also enter the information contained in the separate instrument on the margin of the record of the instrument. The effect of the filing of the affidavit or of the instrument recorded made as herein provided shall be to postpone the effective date of the conclusive presumption of satisfaction to a date 15 years from the filing of the affidavit or from the recording of the instrument or the making of the notation. There shall be only one postponement of the effective date of the conclusive presumption provided for herein. The register of deeds shall record the affidavit provided for herein and shall record a separate instrument, as required by G.S. 161-14.1, making reference to ~~make a reference on the margin of the record of the instrument referred to therein to~~ the filing of such affidavit and to the book and page where the affidavit is recorded. Whenever practical, the register of deeds may also make such a reference on the margin of the record of the deed of trust, mortgage, or other instrument referred to. This subsection shall not apply to any deed, mortgage, deed of trust or other instrument made or given by any railroad company, or to any agreement of conditional sale, equipment trust agreement, lease, chattel mortgage or other instrument relating to the sale, purchase or lease of railroad equipment or rolling stock, or of other personal property.

~~(c) In any county in which deeds of trust and mortgages are recorded in the office of the register of deeds by microphotographic process or any other method or process which renders impractical or impossible the subsequent entry of marginal notations upon the records of instruments, the register of deeds, in lieu of making entries of acknowledgment, of satisfaction or of cancellation and satisfaction, shall require the submission for recordation of a notice of satisfaction sufficient to comply with the provisions of G.S. 45-37.2.~~

(d) For the purposes of this section 'register of deeds' means the register of deeds, his deputies or assistants of the county in which the mortgage, deed of trust, or other instrument intended to secure the payment of money or performance of other obligation is registered.

(e) Any transaction subject to the provisions of the Uniform Commercial Code, Chapter 25 of the General Statutes, is controlled by the provisions of that act and not by this section.

(f) Whenever this section requires a signature or endorsement, that signature or endorsement shall be followed by the name of the person signing or endorsing the document printed, stamped, or typed so as to be clearly legible. The register of deeds may refuse to accept any document when the provisions of this subsection have not been met."

Sec. 5. G.S. 45-6 reads as rewritten:

"§ 45-6. Renunciation by representative; clerk appoints trustee.

The executor or administrator of any deceased mortgagee or trustee in any mortgage or deed of trust heretofore or hereafter executed may renounce in writing, before the clerk of the superior court before whom he qualifies, the trust under the mortgage or deed of trust at the time he qualifies as executor or administrator, or at any time thereafter before he intermeddles with or exercises any of the duties under said mortgage or deed of trust, except to preserve the property until a trustee can be appointed. In every such case of renunciation the clerk of the superior court of any county wherein the said mortgage or deed of trust is registered has power and authority, upon proper proceedings instituted before him, as in other cases of special proceedings, to appoint some person to act as trustee and execute said mortgage or deed of trust. The clerk, in addition to recording his proceedings in his book of orders and decrees, shall record a separate instrument, as required by G.S. 161-14.1, containing the name of the substituted trustee or mortgagee and may enter the name of the substituted trustee or mortgagee on the margin of the deed in trust or the mortgage in the book of the office of the register of deeds of said county."

Sec. 6. G.S. 45-16 reads as rewritten:

"§ 45-16. Register of deeds to make marginal entry of substituted trustee.

Whenever any substituted trustee shall be appointed as provided in G.S. 45-10 to 45-17 and such designation of such substituted trustee shall have been registered, together with the certificates required in G.S. 45-10 to 45-17, then it shall be the duty of the register of deeds to record a separate instrument, as required by G.S. 161-14.1, ~~make an appropriate notation on the margin of the registration of the said mortgage, deed of trust, or other instrument securing the payment of money,~~ indicating the place of registration of such appointment of a substituted trustee, and this shall be done as many times as a trustee may be substituted as provided for in G.S. 45-10 to 45-17. Whenever practical, the register of deeds may also make an appropriate notation on the margin of the registration of the mortgage, deed of trust, or other instrument securing the payment of money. It shall be competent for the holder of such deed of trust, or deeds of trust, mortgage or mortgages, wherein the same trustee is named, to execute one instrument applying to all such deeds of trust or mortgages, in the substitution of a trustee for any of the causes set forth in G.S. 45-10, and in said instrument to recite and name the mortgages and/or deeds of trust affected by giving the names of the grantors, the trustee and, if registered, the book and page of such registration. This may be done as many times as a trustee may be substituted as provided for in G.S. 45-10 to 45-17, and in which cases the register of deeds shall

make, as to each recited instrument, mortgage or deed of trust, the notation provided for in this section."

Sec. 7. G.S. 45-42.1 reads as rewritten:

"*§ 45-42.1. Corporate cancellation of lost mortgages by register of deeds.*

Upon affidavit of the secretary and treasurer of a corporation showing that the records of such corporation show that such corporation has fully paid and satisfied all of the notes secured by a mortgage or deed of trust executed by such corporation and such payment and satisfaction was made more than 25 years ago, and that such mortgage or deed of trust was made to a corporation which ceased to exist more than 25 years ago, and such affidavit shall further state that the records of such corporation show that no payments have been made on such mortgage by the corporation executing such mortgage or deed of trust for 25 years, the register of deeds of the county in which such mortgage or deed of trust is recorded is authorized and empowered to file such affidavit and record the same in his office and to record a separate instrument making reference to the filing of such affidavit and to the book and page where the affidavit is recorded. The register of deeds may also make reference thereto on the margin of the record in which the said mortgage or deed of trust is recorded, and, upon recording such instrument or making such entry, the said mortgage or deed of trust shall be deemed to be cancelled and satisfied and the said register of deeds is hereby authorized to cancel the same of record: Provided, that this section shall not apply to any mortgagor corporation except those in which the State of North Carolina owns more than a majority of the capital stock and shall not apply to any mortgage or deed of trust in which the principal amount secured thereby exceeds the sum of fifteen thousand dollars ($15,000): Provided, such cancellation shall not bar any action to foreclose such mortgage or deed of trust instituted within 90 days after the same is cancelled."

Sec. 8. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 23rd day of May, 1991.

S.B. 134 **CHAPTER 115**

AN ACT TO AUTHORIZE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO DESIGNATE STATE TRAILS BY WRITTEN AGREEMENTS WITH PRIVATE LANDOWNERS AND OTHER UNITS OF GOVERNMENT WITHOUT REQUIRING THE DEPARTMENT TO POSSESS AN INTEREST IN THE PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-87 reads as rewritten:

"*§ 113A-87. Authority to designate trails.*

The Department may establish and designate ~~State scenic and recreation trails~~ components of the North Carolina Trails System on (i) lands administered by the Department~~; or on lands~~, (ii) lands under the jurisdiction of a State department, political subdivision, or federal ~~agency~~ agency, or (iii) private lands ~~providing~~; provided, fee-simple title, ~~or~~ lesser estates, scenic easements, easements of surface ingress and egress running with the land ~~or~~, leases, or other written agreements are obtained from landowners through which a State trail may pass."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 299 **CHAPTER 116**

AN ACT TO INCORPORATE THE TOWN OF LEWISVILLE IN FORSYTH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A charter for the Town of Lewisville is enacted to read:

"CHARTER OF THE TOWN OF LEWISVILLE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. *Incorporation and Corporate Powers.* The inhabitants of the Town of Lewisville are a body corporate and politic under the name 'Town of Lewisville.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on municipal corporations, currently or hereinafter enacted, by the North Carolina Constitution, the general law of North Carolina and this Charter.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2-1. *Town Boundaries.* Until modified in accordance with the law, the boundaries of the Town of Lewisville are as follows:

Beginning at a point, said point being the northeast corner of Tax Lot 35C Tax Block 4425; thence along the east line of Tax Lot 35C to the northern terminus of Ketner Road (SR 1316); thence along the northern terminus of said Ketner Road to the southeast corner of Tax Lot 35C Tax Block 4425; thence along a line parallel to the centerline of Ketner Road (SR 1316) and thirty feet (30') west measured normal

to the centerline to a point in the north right of way of Shallowford Road (SR 1001), said point being the southeast corner of Tax Lot 52A Tax Block 4425; thence south to a point in the south right of way of said Shallowford Road (SR 1001) and in the north line of Tax Lot 44 Tax Block 4429; thence along the south right of way line of Shallowford Road (SR 1001) to the northwest corner of Tax Lot 4B Tax Block 4429; thence south along the west line of Tax Lot 4B Tax Block 4429 to the northeast corner of Tax Block 4426 and the northeast corner of Tax Lot 1D Tax Block 4426; thence southward along the common boundary line of Tax Blocks 4426 and 4429 to a point in the north line of Tax Block 4431, said point being the southeast corner of Tax Lot 1K Tax Block 4426; thence along the south boundary of Tax Block 4429 to the northeast corner of Tax Lot 15 Tax Block 4431; thence south along the easterly line of Tax Lot 15 Tax Block 4431 to the westerly right of way of Styers Ferry Road (SR 1103); thence along the westerly right of way line of Styers Ferry Road (SR 1103), said line thirty feet (30') normal to and parallel with the centerline of Styers Ferry Rd. (SR 1103), to the southeast corner of Tax Lot 2 Tax Block 4431; thence crossing US Highway 421 on a line thirty feet (30') west of the centerline of said Styers Ferry Road, said line measured normally to and parallel with the centerline of Styers Ferry Road (SR 1103), and continuing to the southerly right of way line of US Highway 421 to the northwest corner of Tax Lot 41J Tax Block 4433; thence crossing Reynolds Road (SR 1160) to a point thirty feet (30') west of the centerline of said road and on a line normal to the west line of Tax Lot 41J Tax Block 4433; thence, along the west right of way line of Reynolds Road (SR 1160), said right of way line being thirty feet (30') normal to and parallel with the centerline of said road, to the southeast corner of Tax Lot 3 Tax Block 4433B; thence, along the northwesterly right of way line of Styers Ferry Road (SR 1100), said right of way line being thirty feet normal to and parallel with the centerline of said road, crossing the termini of Westland Lane, Lasley Road (SR 1161) and Dull Road (SR 1170) to the southeast corner of Tax Lot 37G Tax Block 4405; thence, along the southerly boundaries of Tax Lot 37G Tax Block 4405 to the southeast corner of Tax Lot 618 Tax Block 4405; thence along the south boundary of Tax Lot 618 Tax Block 4405 to the southwest corner of Tax Lot 618 Tax Block 4405; thence south along the boundary line of Tax Lots 82K and 26A Tax Block 4405 to the southerly corner of Tax Lot 26A Tax Block 4405; thence along the southwesterly and northwesterly boundary line of Tax Lot 26A Tax Block 4405; thence southwesterly and south along the boundary line of Tax Lots 26B and 17U to the common corner of Tax Lots 17U and 26B Tax Block 4405; thence west along the boundary of Tax Lots 28

and 17U Tax Block 4405; thence southwest along the common boundary line of Tax Lots 28 and 17U Tax Block 4405 to the common corner of Tax Lots 28, 10, and 17U Tax block 4405; thence along the south and southwest boundary of Tax Lot 17U Tax Block 4405 then falling in with the south and northern boundary of Tax Block 4405C to the run of Ellison Creek; then along the current run of Ellison Creek as it meanders generally southwesterly through Tax Lot 1011 Tax Block 4407 beginning at the east boundary of Tax Block 4407A thence along the southerly and westerly boundary of Tax Block 4407, 4407B and 4408 to the northwest corner of Tax Lot 101 Tax Block 4407A said point being the southerly terminus of Crashore Drive (SR 1168); thence westerly to the southeasterly corner of Tax Lot 110 Tax Block 4408; thence along the southerly lines of Tax Lots 110 and 108B Tax Block 4408 to the southwesterly corner of Tax Lot 108B Tax Block 4408; thence northerly along the westerly boundary lines of Tax Lots 108B, 10 and 89 Tax Block 4408 to the common corner of Tax Lots 9A and 9B Tax Block 4408; said corner being in the southerly margin of Styers Ferry Road (SR 1168), said right of way line being taken as thirty feet (30') normal to and parallel with the centerline of said road to a point in the southerly right of way of Styers Ferry Road (SR 1166), said point being opposite the common corner of Tax Lots 30 and 29 Tax Block 4408 and falling in with the southerly and west lines of Tax Lot 30 Tax Block 4408 to a corner of Tax Lot 10 Tax Block 4470; thence along the west and northerly line respectively of Tax Block 4470 to the northeast corner of Tax Lot 8 Tax Block 4470, said corner being in the west line of Tax Lot 1N Tax Block 4407; thence north along the west line of Tax Lot 1N Tax Block 4407 falling in with the east line of Tax Block 4408 and crossing Concord Church Road (SR1171) to the common corner of Tax Blocks 4407 and 4450 in the easterly line of Tax Block 4408; thence continuing northwardly along the common boundary of Tax Blocks 4408 and 4450 to a point the southwesterly terminus of Weinstock Street and a common corner of Tax Lot 203 Tax Block 4438 and Tax Lot 10 Tax Block 4450; thence counter clockwise around the southerly and easterly boundary of Tax Lot 203 Tax Block 4438 to the northeast corner of Tax Lot 203 Tax Block 4438 and being in the southerly line of Tax Lot 102D Tax Block 4438; thence along the southerly line of Tax Lot 102D Tax Block 4438 and falling in with the north boundary line of Tax Block 4449 to the northeast corner of Tax Block 4449 and in the west line of Tax Lot 101C Tax Block 4438; thence north along the west line of Tax Lots 101C and 101D Tax Block 4438 and crossing Doubs Road (SR 1172) to the northwest corner of Tax Lot 101D Tax Block 4438 and in the south line of Tax Lot 504 Tax Block 4438A falling in with the south line of

Tax Lot 14N Tax Block 4438 to the southwest corner of Tax Lot 14N Tax Block 4438; thence along the westerly boundary of Tax Lot 14N Tax Block 4438 to the northwest corner of Tax Lot 14N Tax Block 4438 and a corner with Tax Lot 23 Tax Block 4438A, the southern terminus of Lewisville Trails Road (SR3713); thence along the boundary of Tax Block 4438A crossing the southern terminus of Lewisville Trails Road (SR3713) and continuing clockwise along said boundary to the northeasterly corner of Tax Lot 15 Tax Block 4438 in the southerly right of way of Williams Road (SR 1173); thence crossing said road to the northerly right of way line; thence along the northerly right of way line of Williams Road (SR 1173), said line being thirty feet (30') normal to and parallel with the centerline of said Williams Road (SR 1173), to the common corner of Tax Lots 303 and 33C Tax Block 4437; thence north along the common boundary of Tax Lots 303 and 33C Tax Block 4437 to the common corner of Tax Lots 303 and 33C Tax Block 4437 in the southerly right of way of US Highway 421; thence crossing the US Highway 421 to the common corner of Tax Lots 36B and 33B Tax Block 4437 in the northerly right of way of US Highway 421; thence along the northerly right of way of US Highway 421 to the run of an un-named stream at its juncture with the northerly right of way line of US Highway 421; thence with the run of said un-named stream northeasterly crossing Tax Lot 31C Tax Block 4437 to a common corner of Tax Lots 18D and 18J Tax Block 4437; thence along the common boundaries of Tax Lot 18D and Tax Lots 18J, 18G and 18J respectively Tax Block 4437 to the common corner of Tax Lots 18D and 18J Tax Block 4437 in the south right of way of Shallowford Road (SR 1001); thence crossing Shallowford Road (SR1001) to the southeast corner of Tax Lot 6 Tax Block 4436 and continuing along the east boundary of said tax lot north to the northwest corner of Tax Lot 105 Tax Block 4436 in the south line of Tax Lot 107 Tax Block 4436; thence northeasterly along the south line of Tax Lot 107 Tax Block 4436 to a common corner of Tax Lots 107 and 1 Tax Block 4436 in the boundary line of Tax Blocks 4436 and 4612; thence along said boundary line northwardly to the northeast corner of Tax Lot 108 Tax Block 4436; thence along the north lines of Tax Lot 108 Tax Block 4436 to the easterly margin of Conrad Road (SR1305), the northwest corner of Tax Lot 108 Tax Block 4436; thence southwardly along the east right of way line of Conrad Road (SR 1305), said line being thirty feet (30') normal to and parallel with the center line of Conrad Road (SR1305), to a point in the north line of Tax Lot 17 Tax Block 4609 and being in the north line of Tax Block 4609; thence along the common boundary line of Tax Blocks 4609 and 4436 clockwise to a point in the east margin of Conrad Road (SR1305) at or near the southeast

corner of Tax Lot 17 Tax Block 4609; thence crossing Conrad Road (SR1305) with the south line of Tax Lot 17 Tax Block 4609 to the southwest corner of Tax Lot 17 Tax Block 4609; thence north along the west line of Tax Lot 17 Tax Block 4609 and falling in with the common boundary line between Tax Blocks 4436 and 4609 to the northwest corner of Tax Lot 13 Tax Block 4436 in the east line of Tax Lot 402 Tax Block 4609, also being the southwesterly corner of Tax Lot 8C Tax block 4609; thence northerly with the westerly line of Tax Lot 8C Tax Block 4609 to the southeast corner of Tax Lot 16C Tax Block 4608; thence northwardly along the east line of Tax Lot 16C Tax Block 4608 and falling in with the easterly line of Tax Lot 16D Tax Block 4608 to the northeast corner of said Tax Lot; thence west along the north boundary of Tax Lot 16D Tax Block 4608 to the common corner of Tax Lots 5 and 6 Tax Block 4608 in the north line of Tax Lot 16D Tax Block 4608; thence along the boundary of Tax Lots 5 and 6 Tax Block 4608 to a common corner of said Tax Lots in the west margin of Conrad Road (SR 1305); thence crossing Conrad Road (SR 1305) to a common corner of Tax Lots 5 and 12A Tax Block 4608; thence north along the east right of way line of Conrad Road (SR 1305), said right of way line being thirty feet (30') normal and parallel to the centerline of said road, to the northwesterly corner of Tax Lot 12A Tax Block 4608, said corner taken as thirty feet (30') south of the centerline of Grapevine Road (SR 1312); thence with the southerly right of way line of Grapevine Road (SR 1312), said line being thirty feet (30') normal to and parallel with the centerline of Grapevine Road (SR 1312), to a point in the southerly right of way of Grapevine Road (SR 1312) and in the north boundary of Tax Lot 504 Tax Block 4612; thence on a line normal to the centerline of Grapevine Road (SR 1312) and falling in with the westerly line of Tax Lot 14 Tax Block 4608; thence east to the northeast corner of Tax Lot 14 Tax Block 4608 and a corner with Tax Block 4608 in the west line of Tax Lot 13 Tax Block 4608; thence along the west line of Tax Lot 13 Tax Block 4608 to the northwest corner of Tax Lot 13 Tax Block 4608, said corner lying in the southerly line of Tax Block 4607; thence along the southern boundary line of Tax Block 4607 east to a Tax Block corner north of Tax Lot 21 Tax Block 4608A; thence continuing along the boundary of Tax Block 4608A clockwise to the common corner of Tax Blocks 4608A, 4615 and 4613; thence eastwardly along the boundary line of Tax Blocks 4615 and 4613 to the southeast corner of Tax Lot 6 Tax Block 4615 in the north line of Tax Lot 51C Tax Block 4613; thence continuing along the north boundary line of Tax Lots 51C and 52 Tax Block 4613 to the northeast corner of Tax Lot 52 Tax Block 4613 and the northwest corner of Tax Block 4662; thence along the north line of Tax Block

4662 to the northeast corner of Tax Lot 21 Tax Block 4662 and northwest corner of Tax Lot 7D Tax Block 4613; thence along the northerly line of Tax Lot 7D Tax Block 4613 to the northeast corner of said lot in the west margin of Lewisville-Vienna Road (SR 1308); thence crossing Lewisville-Vienna Road (SR 1308) and falling in with the south line of Tax Block 4661 to a point, the northeast corner of Tax Lot 1F Tax Block 4613 and also being a corner of Tax Block 4613; thence south along the east boundary line of Tax Block 4613 to a common corner of Tax Blocks 4613 and 4615 in the north boundary line of Tax Block 4614; thence south along the east boundary of Tax Lot 104 Tax Block 4614; thence south along the east boundary of Tax Lot 5N Tax Block 4614 to the southeast corner of said Tax Lot and continuing southward to the centerline of Marshall Road (SR 1311); thence east with the centerline of said road to the west line of Tax Lot 108 Tax Block 4614; thence south along the west boundary of Tax Lot 108 Tax Block 4614 to the northwest corner of Tax Lot 4C Tax Block 4614; thence clockwise around Tax Lot 4C Tax Block 4614 to the northeast corner of Tax Lot 15 Tax Block 4681; thence east along the north boundary line of Tax Block 4681 to the common corner of Tax Blocks 4681, 4614 and 4619; thence south along the boundary line of Tax Blocks 4681 and 4619 falling in with the boundary line of Tax Blocks 4616 and 4619 to the common corner of Tax Blocks 4616 and 4619 in the north line of Tax Block 4425A; thence clockwise with the boundary of Tax Blocks 4425A and 4619 to the common corner of Tax Lots 117V and 44 Tax Block 4425A; thence east along the boundary line of Tax Blocks 4425A and 4619 falling in with the boundary line of Tax Blocks 4425 and 4619 to the northeast corner of Tax Lot 91J Tax Block 4425; thence clockwise along the common boundary line of Tax Blocks 4425 and 4619 to the point and place of beginning.

All references to lots and blocks contained herein are references to tax lots and tax blocks as they are depicted on the Forsyth County Tax Maps as of February 27, 1991.

To the extent these boundaries reference tax lots and blocks, the reference refers to corners and boundaries of the properties as more particularly described on the recorded instruments from which the tax lots or blocks were created, and these recorded instruments are incorporated herein by reference for purposes of this boundary description.

An accurate description or map of the boundaries of the Town of Lewisville shall be maintained as provided in G.S. 160A-22.

"Sec. 2-2. *Limitation on Boundary Extension.* The Town of Lewisville shall not extend its boundaries by annexation pursuant to Article 4A of Chapter 160A of the General Statutes to the east of its

eastern boundary as described in Section 2-1 of the Charter unless such extension is affirmatively permitted by an annexation agreement entered into by the Town of Lewisville and the City of Winston-Salem in accordance with Article 4A, Part 6 of Chapter 160A of the General Statutes.

"Sec. 2-3. *Limitation on Boundary Extension.* The Town of Lewisville shall not extend its boundaries by annexation pursuant to Article 4A of Chapter 160A of the General Statutes to the south of its southern boundary as described in Section 2-1 of this Charter, unless such extension is affirmatively permitted by an annexation agreement entered into by the Town of Lewisville and the Village of Clemmons in accordance with Article 4A, Part 6 of Chapter 160A of the General Statutes.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of the Town of Lewisville is the Mayor and Town Council, which has six members. The Mayor votes on all matters that come before the governing body, and for all such purposes is deemed a member of the 'council' as that term is used in Part 3 of Article 5 of Chapter 160A of the General Statutes. G.S. 160A-69 does not apply to the Mayor with respect to its provisions concerning voting, but applies to the Mayor with respect to its provisions concerning the Mayor presiding over meetings of the governing body. The presence of a quorum is determined in accordance with G.S. 160A-74.

"Sec. 3-2. *Manner of Electing Town Council.* The qualified voters of the entire Town elect the members of the Town Council.

"Sec. 3-3. *Term of Office of Town Council Members.* Members of the Town Council are elected to two-year terms.

"Sec. 3-4. *Election of Mayor; Term of Office.* The qualified voters of the entire Town elect the Mayor. The Mayor is elected to a two-year term of office.

"Sec. 3-5. *Governing Body; Limitation on Terms of Office.* A member of the governing body who has served four consecutive terms, whether as Mayor or member of the Town Council, or any combination thereof, is not eligible for election or appointment to any office on the governing body for the next two-year term following the four consecutive terms on the governing body.

"Sec. 3-6. *Change of Form of Government.* The form of government of the Town of Lewisville may be changed only (i) in accordance with G.S. 160A-103, or (ii) pursuant to the initiative procedures set forth in Chapter VII of this Charter where the governing body fails to adopt an ordinance proposed by initiative to

change the form of government to a democratic form of government other than those set forth in G.S. 160A-101.

"Sec. 3-7. *Residence of Governing Body Members.* All members of the governing body of the Town of Lewisville, whether elected or appointed, must be registered voters who reside within the corporate limits of the Town of Lewisville in order to qualify to take, hold and continue in any such office.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. *Conduct of Town Elections.* The governing body is elected at large on a nonpartisan basis and the results are determined by a plurality of votes cast, as provided in G.S. 163-292. The initial Town officers are those individuals named and appointed in this act. All initial Town officers so appointed must meet the qualification requirements set forth in Section 3-7 of this Charter. All initial Town officers shall serve until their successors are elected and qualify. The first municipal election shall be in 1991. Elections shall be conducted by the Forsyth County Board of Elections, unless otherwise provided in accordance with G.S. 163-285.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5-1. *Town to Operate Under Council-Manager Plan.* The Town of Lewisville operates under the council-manager plan as provided in Part 2, Article 7 of Chapter 160A of the General Statutes.

"Sec. 5-2. *Interim Budget.* The citizens and property in the Town of Lewisville shall be subject to municipal taxes levied for the year beginning July 1, 1991, and for that purpose the Town shall obtain from Forsyth County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1991. The Town may adopt a budget ordinance for fiscal year 1991-92 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. If ad valorem taxes for fiscal year 1991-92 are adopted after August 1, 1991, they shall become due and payable at par 90 days after the adoption of the ordinance levying them and thereafter as if they had been due on September 1, 1991, in accordance with the schedule in G.S. 105-360.

"CHAPTER VI.

"REMOVAL.

"Sec. 6-1. *Removal by the Governing Body.* The governing body, after a removal hearing and an affirmative vote of five of its members, may remove from office a member of the Town Council or the Mayor for any of the reasons set forth in Article VI, Section 8 of the North Carolina Constitution. A member of the Town Council or the Mayor

may initiate removal by making, at a meeting of the governing body, a motion calling for the removal of an officer. The motion shall specify the grounds on which removal is sought. The Town Clerk shall cause written notice of the motion and a copy of the charges to be given to the officer against whom removal is sought at least 10 days before the removal hearing. At the removal hearing, the officer shall have the right to be heard in person and through counsel in the officer's defense. If a member of the Town Council or the Mayor is removed, the vacancy shall be filled in accordance with the provisions of G.S. 160A-63, provided that any officer so appointed must meet the qualification requirements of Section 3-7 of this Charter.

"Sec. 6-2. *Recall.* The mayor and members of the Town Council are subject to removal pursuant to this section. An officer is removed upon the filing of a sufficient recall petition and the affirmative vote of a majority of those voting on the question of removal at a recall election.

A recall petition shall be filed with the Town Clerk, who shall immediately forward the petition to the board of elections that conducts elections for the Town of Lewisville. A petition to recall the Mayor or a member of the Town Council shall bear the signatures equal in number to at least twenty-five percent (25%) of the registered voters of the Town of Lewisville.

The board of elections shall verify the petition signatures. If a sufficient recall petition is submitted, the board of elections shall certify its sufficiency to the governing body, and the governing body shall adopt a resolution calling for a recall election to be held not less than 60 days nor more than 100 days after the petition has been certified to the governing body. The election may be held by itself or at the same time as any other general or special election within the period established in this section, and shall be held as otherwise provided in G.S. 163-287. The board of elections shall conduct the recall election. The proposition submitted to the voters shall be substantially in the following form:

'FOR the recall of [name of officer]
AGAINST the recall of [name of officer]'

The registered voters of the Town of Lewisville are eligible to vote in an election to recall the Mayor or a member of the Town Council.

If less than a majority of the votes cast on the question are for the officer's recall, the officer continues in office. If a majority of the votes cast on the question are for the officer's recall, the officer is removed on the date the board of elections certifies the results of the election. A vacancy created by removal of a member of the Town Council or the Mayor shall be filled in accordance with the provisions

of G.S. 160A-63, provided that any officer so appointed must meet the qualification requirements set forth in Section 3-7 of this Charter.

No petition to recall an officer may be filed within six months after the officer's election to the governing body nor within six months before the expiration of the officer's term. No more than one election may be held to recall an officer within a single term of office of that officer.

"CHAPTER VII.

"INITIATIVE AND REFERENDUM.

"Sec. 7-1. *General Authority.*

(a) Initiative power. The qualified voters of the Town of Lewisville have the power to propose:

(1) Any ordinance to the Town Council, except a budget ordinance, a bond order, a franchise ordinance or an amendment to the Charter to change the Town's form of government to one of the alternatives set forth in G.S. 160A-101; or

(2) A change in the Town's form of government to any democratic form of government other than those set forth in G.S. 160A-101, provided that such a change becomes effective only if approved by the General Assembly as provided in this Charter.

The initiative process may be used to repeal any ordinance that could be proposed under the initiative process except that it may not be used to repeal any ordinance affirmed by a referendum election within one year after the referendum vote. If the governing body fails to adopt the ordinance without substantive change, or, if it is a proposal under subdivision (2) of this subsection, if the governing body fails to propose to the appropriate legislative delegation adoption of the new form of government, the voters have the power to approve or reject the proposed ordinance or form of government at the polls.

These powers comprise the initiative power.

(b) Referendum power. The qualified voters of the Town of Lewisville have the power to require reconsideration by the governing body of any adopted ordinance, except a budget ordinance, a bond order, a franchise ordinance, or any ordinance that by law may not be adopted without prior public notice and a public hearing. If the governing body fails to repeal an ordinance which it has been required to reconsider, the voters shall have the power to approve or reject the referred ordinance at the polls.

These powers comprise the referendum power.

"Sec. 7-2. *Commencement of Proceedings.* Five or more registered voters of the Town of Lewisville may commence an initiative or referendum petition by filing with the Town of Lewisville clerk an

affidavit stating that they will constitute the petitioners' committee and will be responsible for circulating the petition and filing it in proper form.

"Sec. 7-3. *Petitions.*

(a) Signatures. An initiative or referendum petition shall bear the signatures equal in number to at least fifteen percent (15%) of the registered voters of the Town of Lewisville.

(b) Form and content. Within 90 days of incorporation, the governing body shall by ordinance specify the form and content of a petition and procedures for initiative and referendum elections, consistent with the provisions of this Charter and consistent with generally recognized form and content requirements and procedures for initiative and referendum petitions and elections.

(c) Time for filing. An initiative petition may be filed at any time. A referendum petition must be filed within 30 days after adoption by the governing body of the ordinance sought to be reconsidered.

"Sec. 7-4. *Certification.* The petition shall be filed with the Town Clerk and signatures shall be verified by the board of elections conducting elections for the Town. The governing body shall by ordinance adopt reasonable, generally recognized procedures for certifying the sufficiency of a petition. The governing body shall provide in the ordinance reasonable time limits for completing the certification of sufficiency of the petition.

"Sec. 7-5. *Suspension of Effectiveness of Referred Ordinance.* When, within the time allowed, a referendum petition is filed with the Town Clerk, the effectiveness of the ordinance sought to be reconsidered is suspended. The suspension of the effectiveness of the ordinance shall terminate when:

(1) There is a final determination that the petition is insufficient;

(2) The petitioners' committee withdraws the petition as set forth in Section 7-7 of this Charter; or

(3) The Board of Elections certifies that the repeal of the ordinance has been rejected in an election.

"Sec. 7-6. *Consideration by Town Council and Submission to Vote.*

(a) When an initiative or referendum petition has been finally determined to be sufficient, the governing body shall promptly consider it.

(b) With respect to ordinances, except ordinances proposing a change to a form of government not set forth in G.S. 160A-101, if the governing body fails to adopt without substantive change an ordinance proposed by initiative petition or fails to repeal a referred ordinance within 60 days after the date on which the petition was certified as sufficient, the Town Council shall cause the proposed ordinance or the referred ordinance to be submitted to the voters of the Town of

Lewisville. The vote on the proposed ordinance or the referred ordinance shall be held within 150 days of the date on which the petition was certified as sufficient.

(c) With respect to a change to a form of government not set forth in G.S. 160A-101, if the governing body fails within 90 days to propose to the appropriate legislative delegation adoption of the form of government set forth in the initiative petition, the governing body shall cause the proposed new form of government to be submitted to the voters of the Town of Lewisville. The vote on the proposed new form of government shall be held within 180 days of the date on which the petition was certified as sufficient.

"Sec. 7-7. *Withdrawal of Petition.* The petitioners' committee, being those registered voters named in the affidavit commencing the initiative or referendum, may withdraw the initiative or referendum petition at any time prior to the 15th day immediately preceding the day scheduled for a vote on the proposed or referred ordinance. The written request for withdrawal shall be signed by at least eighty percent (80%) of the members of the petitioners' committee and must be filed with the Town Clerk. The filing of the request withdraws the petition. A withdrawn petition has no further effect and all proceedings are terminated.

"Sec. 7-8. *Results of Elections.*

(a) Initiative.

(1) With respect to ordinances, except ordinances proposing a change to a form of government not set forth in G.S. 160A-101, if a majority of those voting in an initiative election approve the proposed ordinance, it shall become an ordinance of the Town of Lewisville on the date the results of the election are certified or a later effective date specified in the proposed ordinance, provided that the governing body may make nonsubstantive changes to the ordinance that it deems necessary or desirable.

(2) With respect to a change to a form of government not set forth in G.S. 160A-101, if a majority of those voting in an initiative election with respect to a new form of government approve the proposed form of government, then the governing body shall propose to the appropriate legislative delegation adoption of the approved form of government as the government of the Town of Lewisville.

(b) Referendum. If a majority of those voting in a referendum election approve the repeal of the referred ordinance, it is repealed on the date the results of the election are certified. If less than a majority of those voting in the election approve the repeal of the ordinance, the ordinance is an ordinance of the Town of Lewisville and shall become

effective on the date the results of the election are certified or a later effective date specified in the referred ordinance.

"CHAPTER VIII.

"MISCELLANEOUS.

"Sec. 8-1. *State Distributions.* If the Town of Lewisville is incorporated after June 30, 1991, the Town is nevertheless eligible to receive distributions of funds payable by the State of North Carolina for fiscal year 1991-92, as if the Town of Lewisville had been incorporated with an effective date of June 30, 1991.

"Sec. 8-2. *Savings Clause.* If any part of this Charter is declared invalid by a court of competent jurisdiction, such judgment shall not invalidate the remainder of this Charter. All laws and ordinances not consistent with this Charter, insofar as they affect the Town of Lewisville, are superseded by this Charter.

"Sec. 8-3. *Expenses.* The entities sponsoring incorporation shall be entitled to recover from the Town expenses of sponsoring incorporation, provided that the entities seeking recovery shall submit written requests for reimbursement and shall be subject to annual audit."

Sec. 2. (a) The Forsyth County Board of Elections shall conduct an election on a date set by it, to be not less than 60 nor more than 120 days after the date of ratification of this act, for the purpose of submission to the qualified voters of the area described in Section 2-1 of the Charter of the Town of Lewisville, the question of whether or not such area shall be incorporated as the Town of Lewisville, except that the election may also be held on June 25, 1991, and if held on such date, the Forsyth County Board of Elections may adjust any timetables or deadlines set by law. Registration for the election shall be conducted in accordance with G.S. 163-288.2. Absentee voting shall be allowed as if the municipal governing body had adopted a resolution under G.S. 163-302 to allow absentee voting.

(b) In the election, the question on the ballot shall be:

"[] FOR Incorporation of Lewisville

[] AGAINST Incorporation of Lewisville."

Sec. 3. In the election, if a majority of the votes cast are cast "FOR Incorporation of Lewisville" then Section 1 of this act becomes effective on the date that the Forsyth County Board of Elections determines the result of the election. Otherwise, Section 1 shall not become effective.

Sec. 4. Until members of the Town Council and the Mayor of the Town of Lewisville are elected in 1991 in accordance with the Town Charter and the laws of North Carolina, Daniel R. Jennings, Henry M. Chilton, Thomas C. Voss, Lynn S. Thrower, Marcia G. Enns, Kenneth M. Sadler, and Anthony J. San Filippo, shall serve as

members of the governing body. Henry M. Chilton is authorized to call the first meeting of the interim governing body. Until a mayor is elected in 1991 in accordance with the Town Charter and the laws of North Carolina, the interim governing body shall, at its first meeting, elect from among its members a chairman who shall have the powers of a mayor provided by general law but may vote on all matters before the governing body.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 477 **CHAPTER 117**

AN ACT TO PERMIT NEW HANOVER COUNTY TO PROVIDE PROCEDURES FOR EVALUATING CONTRACTORS BY ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. The Board of Commissioners of New Hanover County and the Wilmington City Council may, by ordinance, provide procedures for evaluating the work performed by construction contractors on County and City capital improvement projects and the Board of County Commissioners and the City Council may use the evaluations as a factor in determining qualifications of contractors to bid on County and City capital improvement projects. To implement this act, the Board of Commissioners and the City Council may enact a prequalification ordinance which permits the disqualification of construction contractors to bid on capital improvement projects based on the evaluations authorized by this act. If the ordinance provides that the evaluations are to be used to determine the qualified construction contractors, the ordinance shall provide for a public hearing at least 10 days prior to the formal request for proposals.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 544 **CHAPTER 118**

AN ACT TO REPEAL THE LAW REGULATING THE SETTING OF STEEL TRAPS IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 805 of the 1977 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 569 **CHAPTER 119**

AN ACT AMENDING THE CHARTER OF THE CITY OF WILMINGTON TO AUTHORIZE ZONING DENSITY BONUSES IN PROJECTS CONTAINING SPECIFIED AMOUNTS OF LOW AND MODERATE INCOME HOUSING.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Wilmington, being Chapter 495 of the 1977 Session Laws, as amended, is amended by adding a new section to read as follows:

"Sec. 23.10. Low and Moderate Income Housing; Density Bonuses.

(a) The City Council may provide for the granting of density bonuses in one or more zoning districts in which residential uses are permitted, or provide other incentives of value to a developer of housing within the City and its extraterritorial zoning jurisdiction, if any, if the developer agrees to construct at least fifteen percent (15%) of the total housing units within the development for persons and families of low and moderate income. The size of the density bonus may vary with the percentage of housing units constructed within the development for persons or families of low or moderate income.

(b) The City Council may provide for the enforcement of a developer's commitment to provide low and moderate income housing by ordinance or through the adoption of rules and regulations. Such ordinance or rules and regulations may require the developer to record restrictive covenants applicable to the property, to convey real estate interests in the property, to enter into binding contracts satisfactory to the City or to take other lawful action prescribed by the City. The City may prescribe the period of time during which the developer's commitment shall be binding.

(c) When used in this section, the following terms have the meanings indicated:

(1) 'Density bonus' means an increase in the number of housing units allowed on the tract of land upon which the development is located, when compared to the maximum number of housing units which would be allowed on the tract of land in the absence of the density bonus.

(2) 'Low and moderate income' has the meaning prescribed by the regulations of the United States Department of Housing and Urban Development applicable to the City of

Wilmington. In the absence of such regulations, the term 'low and moderate income' shall have the meaning prescribed by the City Council by ordinance or resolution. The term 'low and moderate' shall also be construed to mean low or moderate income."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 578 **CHAPTER 120**

AN ACT TO ALLOW PENDER COUNTY TO ACQUIRE PROPERTY FOR USE BY THE PENDER COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 885 of the 1989 Session Laws, reads as rewritten:

"Sec. 2. This act applies only to ~~Bladen and Columbus Counties.~~ Bladen, Columbus, and Pender Counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 615 **CHAPTER 121**

AN ACT TO AMEND THE CHARTER OF THE CITY OF WILMINGTON WITH RESPECT TO THE ENFORCEMENT OF BUILDING AND HOUSING ORDINANCES, AND TO AMEND THE CHARTER OF THE TOWN OF WINTON TO IDENTIFY VOLUNTEER FIRE AND RESCUE SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 495 of the 1977 Session Laws, being the Charter of the City of Wilmington, as amended, is amended by adding a new section to read:

"Sec. 23.10. Additional building and housing code remedies. In addition to any other remedy provided by law, the City Council may impose fines and penalties and take any other action authorized by G.S. 160A-175 in adopting, amending, or enforcing any ordinance authorized by Parts 5 or 6 of Article 19 of Chapter 160A of the General Statutes."

Sec. 2. Section 11 of Chapter 16 of the 1921 Private Laws (Extra Session) is amended by adding a new paragraph to read:

"The Town of Winton Volunteer Fire Department provides fire protection services to the Town and is recognized by the Town as a provider of those services. The Town of Winton Volunteer Rescue Squad provides rescue and emergency medical services to the Town and is recognized by the Town as a provider of those services."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 619 **CHAPTER 122**

AN ACT TO AUTHORIZE THE CITY OF WILMINGTON TO FILE WITH THE REGISTER OF DEEDS A NOTICE OF SPECIAL CONDITIONS ATTACHED TO THE ZONING OF PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-381 reads as rewritten:

"§ *160A-381. Grant of power.*

For the purpose of promoting health, safety, morals, or the general welfare of the community, any city may regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence or other purposes and to provide density credits or severable development rights for dedicated rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11. These regulations may provide that a board of adjustment may determine and vary their application in harmony with their general purpose and intent and in accordance with general or specific rules therein contained. The regulations may also provide that the board of adjustment or the city council may issue special use permits or conditional use permits in the classes of cases or situations and in accordance with the principles, conditions, safeguards, and procedures specified therein and may impose reasonable and appropriate conditions and safeguards upon these permits. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made of recreational space and facilities. In the event that the board of adjustment or the city council has granted a variance or approved the issuance of a permit subject to conditions, the city may cause a notice of said conditions in a form and manner prescribed by the city council to be recorded with the register of deeds of the county in which the affected real property is located in order to provide notice of said

conditions to subsequent purchasers of the property. The city council may, and at the written request of the property owner, shall, record with the register of deeds a notice of revocation or termination of said conditions whenever said conditions are revoked, terminated, or otherwise removed. When issuing or denying special use permits or conditional use permits, the city council shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of *certiorari*. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the city council is filed in such office as the ordinance specifies, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the clerk at the time of the hearing of the case, whichever is later. The decision of the city council may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested."

Sec. 2. This act applies only to the City of Wilmington.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 631 **CHAPTER 123**

AN ACT TO CHANGE THE ELECTION DATE FOR THE BOARD OF EDUCATION OF THE GREENSBORO CITY SCHOOL ADMINISTRATIVE UNIT TO BE THE SAME AS FOR THE CITY OF GREENSBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 2.2 of the Greensboro Public School Code, being Section 4 of Chapter 385 of the 1949 Session Laws, as amended by Chapter 186 of the 1959 Session Laws and Chapter 472 of the 1975 Session Laws, Chapter 181, Session Laws of 1979, Chapter 26, Session Laws of 1981, and Chapter 429, Session Laws of 1983, is amended by adding a new subsection to read:

"(i) Beginning in 1993, members shall be elected to the Greensboro City Board of Education in the odd-numbered years. The election and primary shall be on the same dates provided by G.S. 163-279 for municipal elections. There shall be no election in 1992, and the terms of office that were scheduled to expire in 1992 and 1994 are extended until 1993 and 1995, respectively."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 38 **CHAPTER 124**

AN ACT TO CHANGE THE COMPOSITION OF THE GENERAL CONTRACTORS LICENSING BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-2 reads as rewritten:

"*§ 87-2. Licensing Board; organization.*

There is created the State Licensing Board for General Contractors consisting of ~~seven members~~ nine members appointed by the Governor for staggered five-year terms. Five of the members shall be ~~which include five general contractors and two public members appointed by the Governor for staggered five-year terms.~~ general contractors, one member shall be a registered engineer who practices structural engineering, and three shall be public members. Of the general contractor members, one ~~One member~~ shall have as the larger part of his business the construction of highways; one ~~member~~ shall have as the larger part of his business the construction of public utilities; one ~~member~~ shall have as the larger part of his business the construction of buildings; ~~one member shall be either a highway, utility, or building contractor; one member~~ and two shall have as a larger part of ~~his business~~ their businesses the construction of ~~residences;~~ residences, one of whom shall be the holder of an unlimited general contractor's license. ~~and two members shall be public members who~~ The public members shall have no ties with the construction industry and ~~who~~ shall represent the interests of the public at large. Members shall serve until the expiration of their respective terms and until their successors are appointed and qualified. Vacancies occurring during a term shall be filled by appointment of the Governor for the remainder of the unexpired term. The Governor may remove any member of the Board for misconduct, incompetency, or neglect of duty. No Board member shall serve more than two complete consecutive terms."

Sec. 2. G.S. 87-11 reads as rewritten:

"*§ 87-11. Revocation of license; charges of fraud, negligence, incompetency, etc.; hearing thereon; reissuance of certificate.*

(a) The Board shall have the power to revoke the certificate of license of any general contractor licensed hereunder who is found guilty of any fraud or deceit in obtaining a license, or gross negligence, incompetency or misconduct in the practice of his profession, or willful violation of any provisions of this Article. Any person may prefer charges of such fraud, deceit, negligence or

misconduct against any general contractor licensed hereunder; such charges shall be in writing and sworn to by the complainant and submitted to the Board. Such charges, unless dismissed without hearing by the Board as unfounded or trivial, shall be heard and determined by the Board in accordance with the provisions of Chapter ~~150A~~ 150B of the General Statutes.

(b) The Board shall adopt and publish guidelines, consistent with the provisions of this Article, governing the suspension and revocation of licenses.

(c) The Board shall establish and maintain a system whereby detailed records are kept regarding complaints against each licensee. This record shall include, for each licensee, the date and nature of each complaint, investigatory action taken by the Board, any findings by the Board, and the disposition of the matter.

(d) The Board may reissue a license to any person, firm or corporation whose license has been revoked: Provided, ~~three~~ five or more members of the Board vote in favor of such reissuance for reasons the Board may deem sufficient.

The Board shall immediately notify the Secretary of State of its findings in the case of the revocation of a license or of the reissuance of a revoked license.

A certificate of license to replace any certificate lost, destroyed or mutilated may be issued subject to the rules and regulations of the Board."

Sec. 3. This act is effective upon ratification. Section 1 of this act applies to appointments made on or after that date.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 353 **CHAPTER 125**

AN ACT TO MAKE VARIOUS TECHNICAL AMENDMENTS TO THE PHARMACY PRACTICE ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.5 reads as rewritten:

"*§ 90-85.5. Objective of Pharmaceutical Association.*

The objective of the Association is to unite the pharmacists of this State for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent and to ~~evaluate~~ elevate the standard of professional thought."

Sec. 2. G.S. 90-85.20 reads as rewritten:

"*§ 90-85.20. Licensure without examination.*

(a) The Board may issue a license to practice pharmacy, without examination, to any person who is licensed as a pharmacist in another jurisdiction if the applicant shall present satisfactory evidence of possessing the same qualifications as are required of licensees in this State, that he was licensed by examination in such other jurisdiction, and that the standard of competence required by such other jurisdiction is substantially equivalent to that of this State at that time. The Board must be satisfied that a candidate for licensure has a satisfactory understanding of the laws governing the practice of pharmacy and distribution of drugs in this State.

~~(b) An applicant who has taken and failed to pass the examination for licensure in North Carolina after July 1, 1977, shall not be granted reciprocal licensure in this State until having completed at least five years of the practice of pharmacy in another state.~~"

Sec. 3. G.S. 90-85.36(a) reads as rewritten:

"(a) Except as provided in subsections (b) and (c) below, written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and any person having custody of or access to the prescription orders may divulge the contents or provide a copy only to the following persons:

(1) An adult patient for whom the prescription was issued or a person who is legally appointed guardian of that person;
(2) An emancipated minor patient for whom the prescription order was issued or a person who is the legally appointed guardian of that patient;
(3) An unemancipated minor patient for whom the prescription order was issued when the minor's consent is sufficient to authorize treatment of the condition for which the prescription was issued;
(4) A parent or person in loco parentis of an unemancipated minor patient for whom the prescription order was issued when the minor's consent is not sufficient to authorize treatment for the condition for which the prescription is issued;
(5) The licensed practitioner who issued the prescription;
(6) The licensed practitioner who is treating the patient for whom the prescription was issued;
(7) A pharmacist who is providing pharmacy services to the patient for whom the prescription was issued;
(8) Anyone who presents a written authorization for the release of pharmacy information signed by the patient or his legal representative;
(9) Any person authorized by subpoena, court order or statute;

(10) Any firm, association, partnership, business trust, corporation or company charged by law or by contract with the responsibility of providing for or paying for medical care for the patient for whom the prescription order was issued;
(11) A member or designated employee of the Board;
(12) The executor, administrator or spouse of a deceased patient for whom the prescription order was issued;
(13) Researchers and surveyors who have approval from the Board. The Board shall issue this approval when it determines that there are adequate safeguards to protect the confidentiality of the information contained in the prescription orders and that the researchers or surveyors will not publicly disclose any information that identifies any person; or
(14) The person owning the pharmacy or his authorized agent."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 372 **CHAPTER 126**

AN ACT TO CLARIFY THE LAW RELATING TO THERAPEUTIC LEAVE FOR MEDICAL ASSISTANCE PATIENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-62 reads as rewritten:

"*§ 108A-62. Therapeutic leave for medical assistance patients.*

Patients at an intermediate care facility or skilled nursing facility may take up to 60 days of therapeutic leave in any ~~12-month period~~ one calendar year without the facility losing reimbursement under the medical assistance program, provided, however, no more than ~~14~~ 15 consecutive days may be taken without approval of the Department of Human Resources, Division of Medical Assistance. Under no circumstances shall the number of Medicaid-covered therapeutic leave days exceed 60 days per patient per calendar year."

Sec. 2. This act becomes effective July 1, 1991, and applies to therapeutic leave taken on and after that date.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 373 **CHAPTER 127**

AN ACT TO INCLUDE QUALIFIED DISABLED WORKING INDIVIDUALS IN MEDICARE AS REQUIRED BY FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. Part 6 of Article 2 of Chapter 108A of the General Statutes is amended by adding a new section to read:

"*§ 108A-67. Medicare/Qualified Disabled Working Individuals.*

Qualified disabled working individuals are eligible for the payment of the Medicare Part A premium. An individual is qualified for this payment:

(1) If the Social Security Administration determines the individual to be a 'Disabled Working Individual';

(2) If the individual's income is less than two hundred percent (200%) of the current federal poverty level, as revised annually; and

(3) If the individual is less than 65 years of age."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 385 **CHAPTER 128**

AN ACT TO AMEND THE MAKEUP OF THE YOUTH ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-386 reads as rewritten:

"*§ 143B-386. State Youth Advisory Council -- members; selection; quorum; compensation.*

The State Youth Advisory Council of the Department of Administration shall consist of 20 members. The composition and appointment of the Council shall be as follows:

Ten youths to be elected by the procedure adopted by the Youth Advisory Council, which shall include a requirement that four of the members represent youth organizations; and 10 adults to be appointed by the Governor at least four of whom shall be individuals working on youth programs through youth organizations. Provided that no person shall serve on the Board for more than two complete consecutive terms.

The initial members of the Council shall be the appointed members of the Youth Advisory Board who shall serve for a period equal to the

remainder of their current terms on the Youth Advisory Board. The current terms of the youth members expire July 1, 1976, the current terms of four of the adult members expire April 7, 1976, and the remaining four adult members' terms expire May 1, 1978. At the end of the respective terms of office of the initial members of the Council, the appointment of their successors shall be as follows:

(1) Eight youth members to serve for terms beginning on July 1, 1976, and expiring on June 30, 1977, and two additional youth members to serve for terms beginning on July 1, 1977, and expiring on June 30, 1978. At the end of the terms of office of these youth members of the Council, the appointment of their successors shall be for terms of ~~one year~~ two years and until their successors are appointed and qualify.

(2) Four adult members to serve for terms beginning on April 8, 1976, and expiring on June 30, 1979; four adult members to serve for terms beginning on May 1, 1978, and expiring on June 30, 1980; one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1978; and one additional adult member to serve for a term beginning July 1, 1977, and expiring June 30, 1979. At the end of the respective terms of office of these adult members of the Council, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. At least one adult member shall be an advisor of a local youth council at appointment and for the duration of the term. The total membership shall reasonably reflect the socioeconomic, ethnic, sexual and sectional composition of the State.

Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate an adult member of the Council to serve as chairman at the pleasure of the Governor. The Council shall elect a youth member to serve as vice-chairman for a one-year term.

A majority of the Council shall constitute a quorum for the transaction of business.

Members of the Council who are not officers or employees of the State shall receive per diem and necessary travel and subsistence expenses in accordance with provisions of G.S. 138-5.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

Sec. 2. This act is effective upon ratification and applies to appointments made on and after this date.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 407 **CHAPTER 129**

AN ACT TO CONTINUE PERIODIC REVIEW OF ELECTRIC UTILITY FUEL COSTS.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 677 of the 1987 Session Laws, as amended by Section 1 of Chapter 15 of the 1989 Session Laws is repealed.

Sec. 2. G.S. 62-133.2 is repealed effective July 1, 1997.

Sec. 3. On July 1, 1993 and every two years thereafter, the Utilities Commission shall provide a report to the Joint Legislative Utility Review Committee summarizing the procedures conducted pursuant to G.S. 62-133.2 during the preceding two years and recommending whether this section should be continued, repealed, or amended. The Joint Legislative Utility Review Committee shall report to the General Assembly beginning with the 1994 Regular Session and every two years thereafter which report shall contain the information provided by the Utilities Commission and the Committee's recommendation whether G.S. 62-133.2 should be continued, repealed, or amended.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 409 **CHAPTER 130**

AN ACT TO PROVIDE THAT THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES OR HIS DESIGNEE SHALL BE AN EX OFFICIO MEMBER OF THE NORTH CAROLINA FARMWORKER COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-426.25(b) reads as rewritten:

"(b) The North Carolina Farmworker Council shall consist of ~~12~~ 13 members as follows:

(1) Four shall be appointed by the Governor.

(2) Two shall be appointed by the Speaker of the House of Representatives.
(3) Two shall be appointed by the Lieutenant Governor.
(4) The Secretary of the Department of Human Resources or the Deputy Secretary of the Department if designated by the Secretary shall serve ex officio.
(5) The Commissioner of Labor or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(6) The Commissioner of Agriculture or the Deputy Commissioner of the Department if designated by the Commissioner shall serve ex officio.
(7) The Chairman of the Employment Security Commission or his designee shall serve ex officio.
(8) The Secretary of Environment, Health, and Natural Resources or his designee shall serve ex officio."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 441 **CHAPTER 131**

AN ACT TO PROVIDE THAT TWO AWARDS FOR PREEMINENT ACCOMPLISHMENT MAY BE MADE TO NATIVE-BORN NORTH CAROLINIANS RESIDING OUTSIDE THE STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 140A-3 reads as rewritten:

"§ *140A-3. Annual ~~award to native~~ awards to natives living outside State.*

~~One award shall~~ Awards may be made annually ~~be made~~ to ~~a~~ native-born ~~North Carolinian,~~ North Carolinians, living outside of North Carolina, for preeminent accomplishment in ~~one~~ not more than two of the above fields of creative endeavor."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 554 **CHAPTER 132**

AN ACT TO PROVIDE FOR THE CONTROL OF AQUATIC WEEDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 113A of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Aquatic Weed Control.

"§ 113A-220. Short title.

This Article shall be known as the Aquatic Weed Control Act of 1991.

"§ 113A-221. Definitions.

Unless a different meaning is required by the context, the following definitions shall apply throughout this Article:

(1) 'Department' means the Department of Environment, Health, and Natural Resources.

(2) 'Secretary' means the Secretary of Environment, Health, and Natural Resources or his designee.

(3) 'Noxious aquatic weed' means any plant organism so designated under this Article.

(4) 'Waters of the State' means any surface body or accumulation of water, whether publicly or privately owned and whether naturally occurring or artificially created, which is contained within, flows through, or borders upon any part of this State.

"§ 113A-222. Designation of noxious aquatic weeds.

(a) The Secretary, after consultation with the Director of the North Carolina Agricultural Extension Service, the Wildlife Resources Commission, and the Marine Fisheries Commission, and with the concurrence of the Commissioner of Agriculture, may designate as a noxious aquatic weed any plant organism which:

(1) Grows in or is closely associated with the aquatic environment, whether floating, emersed, submersed, or ditch-bank species, and including terrestrial phases of any such plant organism;

(2) Exhibits characteristics of obstructive nature and either massive productivity or choking density; and

(3) Is or may become a threat to public health or safety or to existing or new beneficial uses of the waters of the State.

(b) A plant organism may be designated as being a noxious aquatic weed either throughout the State or within specified areas within the State.

(c) The Secretary shall designate a plant organism as a noxious aquatic weed by rules adopted pursuant to Chapter 150B of the General Statutes.

(d) The Secretary may modify or withdraw any designation of a plant organism as a noxious aquatic weed made previously under this section. Any modification or withdrawal of such designation shall be made following the procedures for designation set out in this section.

"§ 113A-223. Powers and duties of the Secretary.

(a) The Secretary shall direct the control, eradication, and regulation of noxious aquatic weeds so as to protect and preserve human health, safety, and the beneficial uses of the waters of the State and to prevent injury to property and beneficial plant and animal life. The Secretary shall have the power to:

(1) Conduct research and planning related to the control of noxious aquatic weeds;

(2) Coordinate activities of all public bodies, authorities, agencies, and units of local government in the control and eradication of noxious aquatic weeds;

(3) Delegate to any public body, authority, agency, or unit of local government any power or duty under this Article, except that the Secretary may not delegate the designation of noxious aquatic weeds;

(4) Accept donations, grants, and services from both public and private sources;

(5) Enter into contracts or agreements, including cost-sharing agreements, with public or private agencies for research and development of methods of control of noxious aquatic weeds or for the performance of noxious aquatic weed control activities;

(6) Construct, acquire, operate, and maintain facilities and equipment necessary for the control of noxious aquatic weeds; and

(7) Enter upon private property for purposes of conducting investigations and engaging in aquatic weed control activities.

(b) The Secretary may control, remove, or destroy any noxious aquatic weed located in the waters of the State or in areas adjacent to such waters wherever such weeds threaten to invade such waters. The Secretary may employ any appropriate control technology which is consistent with federal and State law, regulations, and rules. Control technologies may include, but are not limited to drawdown of waters, application of chemicals to shoreline and surface waters, mechanical controls, physical removal from transport mechanisms, quarantine of transport mechanisms, and biological controls. Any biological control technology may be implemented only after the environmental review provisions of the State Environmental Policy Act have been satisfied.

(c) In determining the appropriate strategies and technologies, the Secretary shall consider their relative short-term and long-term cost-efficiency and effectiveness, consistent with a margin of safety adequate to protect public health and the resources of the State.

(d) All activities carried out by the Secretary, his designees, and others authorized to perform any function under this Article shall be

consistent with all applicable federal and State law, regulations, and rules.

"§ *113A-224. Powers of the Commissioner of Agriculture.*

(a) The Commissioner of Agriculture may regulate the importation, sale, use, culture, collection, transportation, and distribution of a noxious aquatic weed as a plant pest under Article 36 of Chapter 106 of the General Statutes.

(b) This Article shall not be construed to limit any power of the Commissioner of Agriculture, the Department of Agriculture, or the Board of Agriculture under any other provision of law.

"§ *113A-225. Responsibilities of other State agencies.*

All State agencies shall cooperate with the Secretary to assist in the implementation of this Article.

"§ *113A-226. Enforcement.*

(a) Any person who violates this Article or any rule adopted pursuant to this Article shall be guilty of a misdemeanor and, upon conviction, shall be fined not less than fifty dollars ($50.00) or more than one thousand dollars ($1,000), or imprisoned for not less than 10 days nor more than 180 days, or both, for each offense.

(b) Whenever there exists reasonable cause to believe that any person has violated this Article or rules adopted pursuant to this Article, the Secretary may request the Attorney General to institute a civil action for injunctive relief to restrain the violation. The Attorney General may institute such action in the name of the State upon relation of the Department in the superior court of the county in which the violation occurred. Upon a determination by the court that the alleged violation of the provisions of this Article or of rules adopted pursuant to this Article has occurred or is threatened, the court shall grant the relief necessary to prevent or abate the violation or threatened violation. Neither the institution of the action, nor any of the proceedings thereon shall relieve any party to such proceedings from any penalty otherwise prescribed for violations of this Article.

"§ *113A-227. Adoption of rules.*

The Secretary may adopt rules necessary to implement the provisions of this Article pursuant to Chapter 150B of the General Statutes."

Sec. 2. This act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 559 **CHAPTER 133**

AN ACT TO MAKE A TECHNICAL CORRECTION IN THE LAW REGARDING CERTIFICATES FOR FIRE PREVENTION INSPECTORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-151.13(c) reads as rewritten:

"(c) *(For effective date see note)* A Code-enforcement official holding office as of the date specified in this subsection for the county or municipality by which he is employed, shall not be required to possess a standard certificate as a condition of tenure or continued employment but shall be required to complete such in-service training as may be prescribed by the Board. At the earliest practicable date, such official shall receive from the Board a limited certificate qualifying him to engage in Code enforcement at the performance level and within the governmental jurisdiction in which he is employed. The limited certificate shall be valid only as an authorization for the official to continue in the position he held on the applicable date and shall become invalid if he does not complete in-service training within two years following the applicable date in the schedule below, according to the governmental jurisdiction's population as published in the 1970 U.S. Census:

Counties and Municipalities over 75,000 population -- July 1, 1979

Counties and Municipalities between 50,001 and 75,000 -- July 1, 1981

Counties and Municipalities between 25,001 and 50,000 -- July 1, 1983

Counties and Municipalities 25,000 and under -- July 1, 1985

All fire prevention inspectors holding office -- July 1, ~~1991,~~ 1989. Fire prevention inspectors have until July 1, 1993, to complete in-service training.

An official holding a limited certificate can be promoted to a position requiring a higher level certificate only upon issuance by the Board of a standard certificate or probationary certificate appropriate for such new position."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 562 **CHAPTER 134**

AN ACT TO CHANGE THE NAME OF THE COUNCIL ON THE STATUS OF WOMEN TO THE NORTH CAROLINA COUNCIL FOR WOMEN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 120-123(31) reads as rewritten:

"(31) ~~The Council on the Status of Women,~~ The North Carolina Council for Women, as established by G.S. 143B-393."

Sec. 2. G.S. 143B-368(b) reads as rewritten:

"(b) All such functions, powers, duties and obligations heretofore vested in any agency enumerated in Article 10 of Chapter 143A of the General Statutes of North Carolina, are hereby transferred to and vested in the Department of Administration except as otherwise provided by the Executive Organization Act of 1973. They shall include, by way of extension and not limitation, the functions of

(1) The Director of the Department of Administration,
(2) The Systems Management Division,
(3) The North Carolina Capital Planning Commission,
(4) The State Youth Council and the Youth Advisory Board,
(5) The North Carolina Human Relations Commission,
(6) The North Carolina Commission on Interstate Cooperation,
(7) The State Construction Finance Authority,
(8) The Marine Science Council,
(9) The Southern Interstate Nuclear Compact, and
(10) ~~The Council on the Status of Women,~~ The North Carolina Council for Women.

Also the functions shall comprise those specified for the Day-Care Licensing Board in Article 7 of Chapter 110 of the General Statutes, and the North Carolina Manpower Council in Article 29D of Chapter 143 of the General Statutes."

Sec. 3. G.S. 143B-370 reads as rewritten:

"*§ 143B-370. Organization of the Department.*

The Department of Administration shall be organized initially to include the State Goals and Policy Board, the State Personnel Board, the North Carolina Capital Planning Commission, the Child Day-Care Licensing Commission, the North Carolina Drug Commission, the North Carolina Council on Interstate Cooperation, the State Youth Advisory Council, the North Carolina Marine Science Council, the North Carolina Human Relations Council, the North Carolina Council for ~~on the Status of~~ Women, the North Carolina Manpower Council, the Standardization Committee, the Southern Interstate Nuclear Compact, the Division of State Budget and Management, the Division

of State Planning, the Division of State Property and Construction, the Division of State Purchase and Contract, the Division of State Personnel, the Division of State Management Systems, the Division of State General Services, and such other divisions as may be established under the provisions of the Executive Organization Act of 1973."

Sec. 4. Part 10 of Article 9 of Chapter 143B of the General Statutes reads as rewritten:

"Part 10. North Carolina Council for ~~on the Status of~~ Women.

"§ *143B-393. North Carolina Council for ~~on the Status of~~ Women -- creation; powers and duties.*

There is hereby created the North Carolina Council ~~on the Status of~~ for Women of the Department of Administration. The North Carolina Council ~~on the Status of~~ for Women shall have the following functions and duties:

(1) To advise the Governor, the principal State departments, and the State legislature concerning the education and employment of women in the State of North Carolina; and

(2) To advise the Secretary of Administration upon any matter the Secretary may refer to it; and

(3) To establish programs for the assistance of displaced homemakers as set forth in Part 10B of this Article.

"§ *143B-394. North Carolina Council for ~~on the Status of~~ Women -- members; selection; quorum; compensation.*

The North Carolina Council for ~~on the Status of~~ Women of the Department of Administration shall consist of 20 members appointed by the Governor. The initial members of the Council shall be the appointed members of the North Carolina Council for ~~on the Status of~~ Women, three of whose appointments expire June 30, 1977, and four of whose appointments expire June 30, 1978. Thirteen additional members shall be appointed in 1977, six of whom shall serve terms expiring June 30, 1978, and seven of whom shall serve terms expiring June 30, 1979. At the ends of the respective terms of office of the initial members of the Council and of the 13 members added in 1977, the appointment of their successors shall be for terms of two years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term. Members of the Council shall be representative of age, sex, ethnic and geographic backgrounds.

The Governor shall have the power to remove any member of the Council from office in accordance with the provisions of G.S. 143B-16 of the Executive Organization Act of 1973.

The Governor shall designate a member of the Council to serve as chairman at the pleasure of the Governor.

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

Sec. 5. G.S. 143B-394.2(b) reads as rewritten:

"(b) This State Coordinator shall have administrative experience and the recommendation of the North Carolina Rape Crisis Association and the North Carolina Council for ~~on the Status of~~ Women. If possible, the State Coordinator shall have public speaking experience, training in rape crisis intervention and education in a related field."

Sec. 6. G.S. 143B-394.4(2) reads as rewritten:

"(2) 'Council' means the North Carolina Council for ~~on the Status of~~ Women;".

Sec. 7. All rules adopted by the Department of Administration for or upon the recommendation of the Council on the Status of Women shall remain in full force and effect until repealed or superseded by action of the Department of Administration.

Sec. 8. The North Carolina Council for Women shall retain the same records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing that it possessed as the Council on the Status of Women.

Sec. 9. The Revisor of the Statutes shall change any remaining references to the "Council on the Status of Women" in the General Statutes to the "North Carolina Council for Women."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 570 **CHAPTER 135**

AN ACT TO STUDY THE ORGANIZATIONAL STRUCTURE OF THE MARINE FISHERIES COMMISSION AND THE DIVISION OF MARINE FISHERIES OF THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. In addition to the powers and functions set forth in Article 12F of Chapter 120 of the General Statutes, the Joint Legislative Commission on Seafood and Aquaculture shall study the organizational structure of the Marine Fisheries Commission and may

make recommendations to the General Assembly including, but not limited to, reorganizing or abolishing the Commission, creating an advisory commission, and studying the relationship between the Division of Marine Fisheries of the Department of Environment, Health, and Natural Resources and the Commission.

Sec. 2. The Commission shall report its findings, together with any recommended legislation to the 1992 General Assembly.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 637 **CHAPTER 136**

AN ACT TO EXPAND AND REDISTRICT THE GUILFORD COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective on the first Monday of December, 1992, the Board of Commissioners of Guilford County consists of 11 members. The members shall be elected on a partisan basis at the time of the regular county primary and general elections. One shall be elected from each of nine single-member districts established under subsection (e) of this section, and two shall be elected at large from within the entirety of Guilford County.

(b) In 1992 and quadrennially thereafter, members for Districts 4, 5, 7, and 8 shall be elected for four-year terms. In 1992, members for Districts 3 and 6 shall be elected for two-year terms, and in 1994 and quadrennially thereafter, successors shall be elected for a four-year term. In 1994 and quadrennially thereafter, members for Districts 1, 2, and 9 shall be elected for a four-year term. W. Dean Dull who was elected in 1990 for a four-year term is designated as the member from District 1 until the first Monday in December of 1994. Steve Arnold who was elected in 1990 for a four-year term is designated as the member from District 2 until the first Monday in December of 1994. Katie Dorsett who was elected in 1990 for a four-year term is designated as the member from District 9 until the first Monday in December of 1994. In 1992 and quadrennially thereafter, two at-large candidates shall be elected for four-year terms.

(c) The districts set out in subsection (e) of this section are devised and constituted to meet the requirements of the Voting Rights Act of 1965, as amended, and other applicable constitutional provisions.

(d) The qualified voters of each district shall elect the member of the board for that district. Candidates must reside in the district for which they seek to be elected.

(e) The districts are as follows:

(1) District 1 consists of High Point Precincts 3, 5, 6, 7, 9, 11, 12, 17, 18, 21, and 22.

(2) District 2 consists of High Point Precincts 1, 2, 4, 8, 10, 13, 14, 15, 16, 19, 20, 23 and 24, and Deep River.

(3) District 3 consists of Greensboro Precincts 20, 27B, 27C, 34A, 34B, 37B, 38 and 39, and Bruce, North Center Grove, Friendship 1, Oak Ridge and Stokesdale.

(4) District 4 consists of Greensboro Precincts 19, 35B, 35C, 40B and 45, and Gibsonville, GIB-G, North Jefferson, South Jefferson, North Madison, South Madison, North Monroe, South Monroe, North Washington and South Washington.

(5) District 5 consists of Greensboro Precincts 24C and 43, and Clay, Fentress 1, Greene, Friendship 2, Jamestown 1, Jamestown 2, Jamestown 3, South Sumner and Whitsett.

(6) District 6 consists of Greensboro Precincts 14, 17, 18, 22, 23, 24A, 26B and 36, and Fentress 2 and North Sumner.

(7) District 7 consists of Greensboro Precincts 10, 11, 12, 13, 16, 21, 27A, 28, 31, 32, 35A, 37A, 40A, 41A and 41B, and South Center Grove.

(8) District 8 consists of Greensboro Precincts 2, 4, 5, 7, 9, 15, 24B, 25, 26A and 30.

(9) District 9 consists of Greensboro Precincts 1, 3, 6, 8, 29, 33, 42 and 44.

(f) Precincts as mentioned in subsection (e) of this section are as reported by the Bureau of the Census under Public Law 94-171 for the 1990 Census.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 680 **CHAPTER 137**

AN ACT TO EXEMPT BURKE COUNTY FROM CERTAIN STATUTORY REQUIREMENTS IN THE CONSTRUCTION OF A COUNTY DETENTION FACILITY.

The General Assembly of North Carolina enacts:

Section 1. The County of Burke may contract for the design and construction of a county detention facility to prevent or relieve

overcrowding at its current facility without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Sec. 2. This act is effective upon ratification, and expires July 1, 1992.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 712 **CHAPTER 138**

AN ACT TO PROHIBIT HUNTING ON, FROM, OR ACROSS THE RIGHT-OF-WAY OF N.C. HIGHWAY 55 AND N.C. HIGHWAY 306 IN PAMLICO COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or wild bird on, from, or across the right-of-way of N.C. Highway 55 and N.C. Highway 306 in Pamlico County.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or by imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), or by imprisonment not to exceed 90 days, or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to Pamlico County.

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 717 **CHAPTER 139**

AN ACT TO PROVIDE FOR SPECIFIC LICENSING OF RENTAL CAR COMPANY PERSONNEL WHO ACT AS AGENTS FOR INSURERS IN THE SALE OF INSURANCE COVERAGE RELATED TO THE SHORT-TERM RENTAL OF MOTOR VEHICLES.

The General Assembly of North Carolina enacts:

Section 1. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-33-17. Limited license for rental car companies.*

(a) As used in this section:

(1) 'Limited licensee' means a person authorized to sell certain coverages relating to the rental of motor vehicles pursuant to the provisions of this section and Article 28 of Chapter 66 of the General Statutes.

(2) 'Rental agreement' means any written agreement setting forth the terms and conditions governing the use of a vehicle provided by the rental car company.

(3) 'Rental car company' means any person in the business of providing vehicles to the public.

(4) 'Renter' means any person obtaining the use of a vehicle from a rental car company under the terms of a rental agreement.

(5) 'Vehicle' means a motor vehicle of the private passenger type including passenger vans and minivans that are primarily intended for the transport of persons.

(b) The Commissioner may issue to a rental car company, or to a franchisee of a rental car company, that has complied with the requirements of this section, a limited license authorizing the licensee, known as a 'limited licensee' for the purpose of this Article, to act as agent, with reference to the kinds of insurance specified in this section, of any insurer authorized to write such kinds of insurance in this State.

(c) The prerequisites for issuance of a limited license under this section are the filing with the Commissioner of the following:

(1) A written application, signed by an officer of the applicant, for the limited license in such form or forms, and supplements thereto, and containing such information, as the Commissioner may prescribe; and

(2) A certificate by the insurer that is to be named in such limited license, stating that it has satisfied itself that the named applicant is trustworthy and competent to act as its insurance agent for this limited purpose and that the insurer will appoint such applicant to act as the agent in reference to the doing of such kind or kinds of insurance as are permitted by this section, if the limited license applied for is issued by the Commissioner. Such certificate shall be subscribed by an officer or managing agent of such insurer and affirmed as true under the penalties of perjury.

(d) In the event that any provision of this section is violated by a limited licensee, the Commissioner may:

(1) Revoke or suspend a limited license issued under this section in accordance with the provisions of G.S. 58-33-45; or

(2) After notice and hearing, impose such other penalties, including suspending the transaction of insurance at specific rental locations where violations of this Article have occurred, as the Commissioner deems to be necessary or convenient to carry out the purposes of this section.

(e) The rental car company or franchisee licensed pursuant to subsection (b) of this section may act as agent for an authorized insurer only in connection with the rental of vehicles and only with respect to the following kinds of insurance:

(1) Excess liability insurance that provides coverage to the rental car company or franchisee and renters and other authorized drivers of rental vehicles, in excess of the standard liability limits provided by the rental car company in its rental agreement, for liability arising from the negligent operation of the rental vehicle;

(2) Accident and health insurance that provides coverage to renters and other vehicle occupants for accidental death or dismemberment and for medical expenses resulting from an accident that occurs during the rental period;

(3) Personal effects insurance that provides coverage to renters and other vehicle occupants for the loss of, or damage to, personal effects that occurs during the rental period; or

(4) Any other coverage that the Commissioner may approve as meaningful and appropriate in connection with the rental of vehicles.

(f) No insurance may be issued pursuant to this section unless:

(1) The rental period of the rental agreement does not exceed 30 consecutive days; and

(2) At every rental car location where rental car agreements are executed, brochures or other written materials are readily available to the prospective renter that:

a. Summarize, clearly and correctly, the material terms of insurance coverage, including the identity of the insurer, offered to renters;

b. Disclose that these policies offered by the rental car company may provide a duplication of coverage already provided by a renter's personal automobile insurance policy, homeowner's insurance policy, personal liability insurance policy, or other source of coverage;

c. State that the purchase by the renter of the kinds of insurance specified in this section is not required in order to rent a vehicle;

d. Describe the process for filing a claim in the event the renter elects to purchase coverage and in the event of a claim; and

e. Contain any additional information on the price, benefits, exclusions, conditions or other limitations of such policies as the Commissioner may by regulation prescribe; and

(3) Evidence of coverage is provided to every renter who elects to purchase such coverage.

(g) Any limited license issued under this section shall also authorize any salaried employee of the licensee who, pursuant to subsection (h) of this section, is trained to act individually on behalf, and under the supervision, of the licensee with respect to the kinds of insurance specified in this section.

(h) Each rental car company or franchisee licensed pursuant to this section shall conduct a training program which shall be submitted to the commissioner for approval prior to use and which shall meet the following minimum standards:

(1) Each trainee shall receive basic instruction about the kinds of insurance specified in this section offered for purchase by prospective renters of rental vehicles;

(2) Each trainee shall be instructed to acknowledge to a prospective renter of a rental vehicle that purchase of any such insurance specified in this section is not required in order for the renter to rent a vehicle; and

(3) Each trainee shall be instructed to acknowledge to a prospective renter of a rental vehicle that the renter may have insurance policies that already provide the coverage being offered by the rental car company pursuant to this section.

(i) Limited licensees acting pursuant to and under the authority of this section shall comply with all applicable provisions of this Article, except that notwithstanding any other provision of this Article, or any rule adopted by the Commissioner, a limited licensee pursuant to this section shall not be required to treat premiums collected from renters purchasing such insurance when renting vehicles as funds received in a fiduciary capacity, provided that:

(1) The insurer represented by the limited licensee has consented in writing, signed by the insurer's officer, that premiums need not be segregated from funds received by the rental car company on account of vehicle rental; and

(2) The charges for insurance coverage are itemized but not billed to the renter separately from the charges for rental vehicles.

(j) No limited licensee under this section shall advertise, represent, or otherwise hold itself or any of its employees themselves out as licensed insurance agents or brokers."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 795 **CHAPTER 140**

AN ACT TO AMEND THE LAW PERMITTING ELECTROFISHING FOR CATFISH IN PORTIONS OF SAMPSON, PENDER, AND BLADEN COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 129 of the 1989 Session Laws, as amended by Chapter 1004 of the 1989 Session Laws, reads as rewritten:

"Sec. 2. This act applies only to the inland waters of the Black River in Sampson, Pender, and Bladen Counties between ~~Clear Run Bridge at Highway 411~~ the bridge at Highway 1105 and its junction with the Cape Fear ~~River,~~ River. ~~and to that portion of South River in Sampson and Bladen Counties from Ennis Bridge at Highway 1007 to its junction with the Black River.~~ The Wildlife Resources Commission may exercise its discretion to apply this act to that portion of the Black River in Sampson County from Clear Run Bridge at Highway 411 and the bridge at Highway 1105 and to that portion of the South River in Sampson and Bladen Counties from Ennis Bridge at Highway 1007 to its junction with the Black River."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

H.B. 798 **CHAPTER 141**

AN ACT TO PROHIBIT HUNTING FROM PUBLIC ROADS IN SAMPSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt, take, or kill a wild animal or wild bird with a firearm, or to discharge a firearm, from, on, or across the right-of-way of any numbered, State-maintained road, without first obtaining the permission of the owner or lessee of the land abutting the road or the land across which the firearm is being discharged.

Sec. 2. Violation of this act is a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) or by imprisonment not to exceed 30 days, or both, in the discretion of the court.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to Sampson County.

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of May, 1991.

S.B. 282 **CHAPTER 142**

AN ACT TO IMPROVE PROCEDURES RELATING TO ACADEMICALLY GIFTED STUDENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-113(d) reads as rewritten:

"(d) The local educational agency shall furnish the results, findings, and proposals, as described in the individualized education program or group educational program based on the diagnosis and evaluation to the parents or guardian in writing in the parents' or guardian's native language or by their dominant mode of communication, prior to the parent or guardian giving consent for initial placement in special education and related services. Prior notice will be given to the parents or guardian by the local educational agency before any change in placement.

A reevaluation must be completed at least every three years to determine the appropriateness of the child's continuing to receive special education and related ~~services.~~ services: Provided, that a reevaluation for an academically gifted child shall be completed within three years of initial evaluation for a child who has been identified as academically gifted prior to the second semester of the third grade. For a child who is identified as academically gifted during the second semester of the third grade or thereafter, no reevaluation is required."

Sec. 2. This act becomes effective October 1, 1991, and applies to require reevaluations for children who have not reached the second semester of the third grade by this date.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

S.B. 325 **CHAPTER 143**

AN ACT TO ESTABLISH THE TIMES WITHIN WHICH HEALTH CARE FACILITIES MAY FILE PETITIONS FOR CONTESTED CASE HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 131E is amended by adding a new section to read:

"*§ 131E-2. Contested case hearing petition time limit.*

Except as otherwise provided in this Chapter, a petition for a contested case that is authorized by this Chapter shall be filed in the Office of Administrative Hearings within 30 days after the Department mails written notice of an agency decision to the person filing the petition. This section shall not be construed to create any right to file a petition for contested case that is not otherwise granted in this Chapter."

Sec. 2. G.S. 131E-103(b) reads as rewritten:

"(b) The provisions of Chapter 150B of the General Statutes, the Administrative Procedure Act, shall govern all administrative action and judicial review in cases where the Department has taken the action described in subsection (a). A petition for contested case shall be filed within 20 days after the Department mails the licensee a notice of its decision to deny a renewal application, or to recall, suspend, or revoke an existing license."

Sec. 3. G.S. 131E-109(c) reads as rewritten:

"(c) The Secretary or a designee may suspend the admission of any new patients or residents at any nursing home or domiciliary home where the conditions of the nursing home or domiciliary home are detrimental to the health or safety of the patient or resident. This suspension shall remain in effect until the Secretary is satisfied that conditions or circumstances merit the removal of the suspension. This subsection shall be in addition to authority to suspend or revoke the license of the home. Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. The petition for contested case shall be filed in the Office of Administrative Hearings within 20 days after the Department mails a written notice of suspension of admissions to the facility."

Sec. 4. This act becomes effective July 1, 1991, and applies to petitions filed on and after that date.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

S.B. 703 **CHAPTER 144**

AN ACT TO PROVIDE THE TRAVEL AND TOURISM POLICY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. This act shall be known as the Travel and Tourism Policy Act.

Sec. 2. The General Assembly of North Carolina finds that:

(1) The State of North Carolina is endowed with great scenic beauty, historical sites, and cultural resources, and with a population whose ethnic diversity and traditions are attractive to visitors.

(2) These resources should be preserved and nurtured, not only because they are appreciated by other Americans and by visitors from other lands, but because they are valued by the State's own residents.

(3) Tourism provides economic well-being by contributing to employment and economic development, generating State revenues and receipts for local businesses, and increasing international trade.

(4) Tourism is an educational and informational medium for personal growth which informs residents about their State's geography and history, their political institutions, their cultural resources, and their environment, and about each other.

(5) Tourism instills State pride and a sense of common interest among the people of the State.

(6) Tourism enhances the quality of life and well-being of the State's residents by affording recreation, new experiences, and opportunities for relief from job stress.

(7) Tourism promotes international understanding and goodwill, and contributes to intercultural appreciation.

(8) Tourism engenders appreciation of the State's cultural, architectural, technological, and industrial achievements.

(9) The development and promotion of tourism to and within the State is in the interest of the people of North Carolina.

(10) Tourism should develop in an orderly manner in order to provide the maximum benefit to the State and its residents.

(11) A comprehensive tourism policy is essential if tourism is to grow in an orderly way.

Sec. 3. The policy of the State of North Carolina is to:

(1) Encourage the orderly growth and development of travel and tourism to and within the State.

(2) Promote the State's travel and tourism resources to the residents of the State, and to potential visitors from other states and other countries.

(3) Instill a sense of history in the State's young people by encouraging family visits to State historic sites, and by promoting the preservation and restoration of historic sites, trails, buildings, and districts.

(4) Promote the mental, emotional, and physical well-being of the people of North Carolina by encouraging outdoor recreational activities within the State.

(5) Strengthen a sense of common interest among the residents of the State by encouraging them to visit each other's communities and discover each other's traditions and ways of life.

(6) Increase national and international awareness of the State's cultural contributions by encouraging attendance at orchestral, operatic, dramatic, and other productions by artistic groups performing in the State.

(7) Cultivate the State's commercial interests by encouraging local and county fairs so that visitors may learn about local products and crafts.

(8) Encourage the talents and strengthen the economic independence of State residents by encouraging the preservation of traditional craft skills; the production of handicrafts and folk art by private artisans and craftspeople; and the holding of craft demonstrations.

(9) Provide visitors to the State with a hospitable reception.

(10) Develop and maintain a statewide tourism data base.

(11) Encourage the protection of wildlife and natural resources and the preservation of geological, archaeological, and cultural treasures in tourist areas.

(12) Encourage, assist, and coordinate, where possible, the tourism activities of local and area promotional organizations.

(13) Ensure that the tourism interest of the State is fully considered by State agencies and the General Assembly in their deliberations; and coordinate, to the maximum extent possible, all State activities in support of tourism with the needs of the general public, the political subdivisions of the State, and the tourism industry.

Sec. 4. The Department of Economic and Community Development, and the Division of Travel and Tourism within that Department, shall implement the policies set forth in this act. The Division of Travel and Tourism shall make an annual report to the

General Assembly regarding the status of the travel and tourism industry in North Carolina; the report shall be submitted to the General Assembly by January 15 of each year beginning January 15, 1992. The duties and responsibilities of the Department of Economic and Community Development through the Division of Travel and Tourism shall be to:

(1) Organize and coordinate programs designed to promote tourism within the State and to the State from other states and foreign countries.

(2) Measure and forecast tourist volume, receipts, and impact, both social and economic.

(3) Develop a comprehensive plan to promote tourism to the State.

(4) Encourage the development of the State's tourism infrastructure, facilities, services, and attractions.

(5) Cooperate with neighboring states and the federal government to promote tourism to the State from other countries.

(6) Develop opportunities for professional education and training in the tourism industry.

(7) Provide advice and technical assistance to local public and private tourism organizations in promoting tourism to the State.

(8) Encourage cooperation between State agencies and private individuals and organizations to advance the State's tourist interests and seek the views of these agencies and the private sector in the development of State tourism programs and policies.

(9) Give leadership to all concerned with tourism in the State.

(10) Perform other functions necessary to the orderly growth and development of tourism.

(11) Develop informational materials for visitors which, among other things, shall:

a. Describe the State's travel and tourism resources and the State's history, economy, political institutions, cultural resources, outdoor recreational facilities, and principal festivals.

b. Urge visitors to protect endangered species, natural resources, archaeological artifacts, and cultural treasures.

c. Instill the ethic of stewardship of the State's natural resources.

(12) Foster an understanding among State residents and civil servants of the economic importance of hospitality and tourism to the State.

(13) Work with local businesses, including banks and hotels, with educational institutions, and with the United States Travel and Tourism Administration, to provide special services for international visitors, such as currency exchange facilities.

(14) Encourage the reduction of architectural and other barriers which impede travel by physically handicapped persons.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

H.B. 166 **CHAPTER 145**

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF A PORTION OF STATE ROAD 1401 IN CRAVEN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill any wild animal or bird on or from the right-of-way of State Road 1401 in Craven County, from the intersection of State Road 1401 with Washington Post Road to the intersection of State Road 1401 with State Highway 55.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or by imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), by imprisonment not to exceed 90 days, or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs and by other peace officers with general subject matter jurisdiction.

Sec. 4. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

H.B. 348 **CHAPTER 146**

AN ACT TO PROHIBIT HUNTING FROM THE RIGHT-OF-WAY OF HARD-SURFACED ROADS IN JONES COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill with firearms, or to attempt to hunt, take, or kill with firearms, any wild animal or wild bird on, from, or across the right-of-way of any hard-surfaced public road, street, or highway.

Sec. 2. Violation of this act is a misdemeanor punishable for a first conviction by a fine of not less than ten dollars ($10.00) nor more than fifty dollars ($50.00) or by imprisonment not to exceed 30 days, and punishable for a second conviction within three years by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00), by imprisonment not to exceed 90 days, or by both.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 4. Chapter 979 of the 1983 Session Laws (Regular Session 1984) is repealed.

Sec. 5. This act applies only to Jones County.

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

H.B. 600 **CHAPTER 147**

AN ACT TO AMEND THE LAW REGARDING THE LOCAL SUPPLEMENTAL RETIREMENT BENEFIT FUND FOR FIREFIGHTERS IN THE TOWN OF CARY, IN WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 159 of the 1985 Session Laws, as amended by Chapter 924 of the 1989 Session Laws, Regular Session 1990, reads as rewritten:

"CHAPTER 159

AN ACT TO PROVIDE A LOCAL SUPPLEMENTAL RETIREMENT BENEFIT FUND FOR FIRE FIGHTERS IN THE TOWN OF CARY AND TO MODIFY THE APPLICATION OF G.S. 118-5 AND G.S. 118-7.

The General Assembly of North Carolina enacts:

Section 1. Local Supplemental Retirement Benefit Fund Established. There is established a Local Supplemental Retirement Benefit Fund for the Fire Department of the Town of Cary to be known as the 'Cary Local Firemen's Supplemental Retirement Benefit Fund', hereinafter referred to as 'Local Supplemental Retirement Benefit Fund', and to be administered by a board composed of the

members of the trustees of the Local Firemen's Relief Fund of the Town of Cary, established in accordance with G.S. 118-6.

Sec. 2. Disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of the Town of Cary shall as soon as practicable after July 1 of each year, but in no event later than October 1, transfer to the 'Local Supplemental Retirement Benefit Fund' all income resulting from investments of funds belonging to the Cary Local Firemen's Relief Fund, divide the income earned in the preceding ~~calendar~~ fiscal year upon investments of funds belonging to the Local Firemen's Relief Fund into equal shares, and disburse the same as a Local Supplemental Retirement Benefit in accordance with Section 3 of this act. If income from investments is more than what is needed to pay the Local Supplemental Retirement Benefit, the excess funds shall be put back into the Local Firemen's Relief Fund.

Sec. 3. Determination of Benefits. The Board of Trustees shall:

(1) Determine the total years of service by adding together all the completed years of service of all ~~retired~~ eligible fire fighters;

(2) Divide the earned income of the preceding ~~calendar~~ fiscal year by the total years of service as determined in (1) above. The answer constitutes an 'equal share' for the preceding year's earned income: and

(3) Compute each fire fighter's Local Supplemental Retirement Benefit for that year by multiplying his or her completed years of service times an 'equal share'.

Sec. 4. Supplemental Retirement Benefits.

(a) Each retired volunteer fire fighter of the Town of Cary who has retired with 20 or more years of fire service as a fire fighter and has attained the age of 55 and each full-time paid fire fighter of the Town of Cary with at least 15 years of service with the Cary Fire Department and with 30 or more years of fire service as a fire fighter who has attained the age of 55 is entitled to and shall receive an annual supplemental retirement benefit equal to one share for each full year of service as a fire fighter; provided, in no event shall any fire fighter be entitled to or receive in any year an annual benefit in excess of ~~one thousand eight hundred dollars ($1,800).~~ one hundred fifty dollars ($150.00) per 'equal share', as defined in subdivision (2) of Section 3 of this act.

(b) Any fire fighter of the Town who is not otherwise entitled to supplemental retirement benefits under subsection (a) of this section, is nevertheless entitled to benefits if the Board of Trustees makes the following written findings of facts:

(1) That he or she initially retired from his or her position as fire fighter because of his or her inability, by reason of sickness or injury, to perform the normal duties of an active fire fighter; and

(2) That, within 30 days prior to or following his or her initial retirement as a fire fighter, at least two physicians licensed to practice medicine in North Carolina certified that he or she was at such time unable, by reason of sickness or injury, to perform the normal duties of an active fire fighter; and

(3) That, at the time of his or her initial retirement as a fire fighter, there was not available to him or her in the fire department or any other department of the Town a position of employment the normal duties of which he or she was capable of performing.

Sec. 5. If, for any reason, the Fund is insufficient to pay in full any pension benefits, or other charges, then all benefits shall be reduced and paid according to Section 3 of this act, for as long as the deficiency in amount exists. No claim shall accrue with respect to any amount by which a benefit payment has been reduced.

Sec. 6. None of the provisions of this act shall create a liability for the Cary Local Firemen's Supplemental Retirement Benefit Fund or for the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 7. If any provisions of this act shall be declared invalid by a court of competent jurisdiction, this invalidity shall not affect other provisions which can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Sec. 8. All laws and clauses of laws in conflict with this act are repealed.

Sec. 9. This act is effective upon ratification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

H.B. 685 **CHAPTER 148**

AN ACT REGARDING DISCOUNTS FOR PAYMENTS OF PROPERTY TAX IN SURRY COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 105-360(c), the governing body of Surry County or any of its municipalities may provide by resolution, without the approval of the Department of Revenue, that

the schedule of discounts for prepayment of taxes in effect in the county or municipality on August 31, 1991, shall continue in effect until November 1, 1991, or such lesser time as the governing body may direct. The governing body of Surry County or any of its municipalities shall send a certified copy of any resolution adopted pursuant to this act to the Department of Revenue.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

H.B. 699 **CHAPTER 149**

AN ACT TO AMEND THE FAYETTEVILLE CITY CHARTER RELATING TO THE FAYETTEVILLE SUPPLEMENTAL FIREMEN'S FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 8.1 of the Fayetteville City Charter, as rewritten by Section 1 of Chapter 557 of the 1979 Session Laws, is amended by deleting the phrase "G.S. 118-6" and by substituting the phrase "G.S. 58-84-30".

Sec. 2. Section 8.2 of the Fayetteville City Charter, as rewritten by Section 1 of Chapter 557 of the 1979 Session Laws, is amended by deleting the phrase "G.S. 118-7" wherever it appears and by substituting the phrase "G.S. 58-84-35".

Sec. 3. Section 8.2(b) is amended by deleting the phrase "by authority of G.S. 118-5".

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of May, 1991.

S.B. 52 **CHAPTER 150**

AN ACT TO CLARIFY THE AUTHORITY OF LAW ENFORCEMENT OFFICERS TO ARREST WITHOUT A WARRANT FOR CERTAIN MISDEMEANORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-401(b) reads as rewritten:

"(b) Arrest by Officer Without a Warrant. --

(1) Offense in Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe has committed a criminal offense in the officer's presence.

(2) Offense Out of Presence of Officer. -- An officer may arrest without a warrant any person who the officer has probable cause to believe:
   a. Has committed a felony; or
   b. Has committed a misdemeanor, and:
      1. Will not be apprehended unless immediately arrested, or
      2. May cause physical injury to himself or others, or damage to property unless immediately arrested; or
   c. Has committed a misdemeanor under G.S. ~~14-72.1,~~ 14-72.1 or G.S. 14-134.3; or
   d. Has committed a misdemeanor under G.S. 14-33(a), G.S. 14-33(b)(1), or G.S. 14-33(b)(2) when the offense was committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.

~~(3) Subdivision (1) and (2) shall apply to arrest for assault, for communicating a threat, or for domestic criminal trespass, already committed or being committed by a person who is the spouse or former spouse of the alleged victim or by a person with whom the alleged victim is living or has lived as if married.~~"

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

S.B. 130 **CHAPTER 151**

AN ACT TO AUTHORIZE THE CONFERENCE OF CHIEF DISTRICT JUDGES TO ADOPT A SCHEDULE OF PARK AND RECREATION OFFENSES THAT ARE WAIVABLE AND ADOPT A SCHEDULE OF FINES AND PENALTIES FOR THOSE THAT ADMIT GUILT OR ACCEPT RESPONSIBILITY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-148 reads as rewritten:

"*§ 7A-148. Annual conference of chief district judges.*

(a) The chief district judges of the various district court districts shall meet at least once a year upon call of the Chief Justice of the Supreme Court to discuss mutual problems affecting the courts and the improvement of court operations, to prepare and adopt a uniform schedule of traffic offenses, hunting and fishing offenses under Chapter 113, State park and recreation area rule offenses under Chapter 113, boating offenses under Chapter 75A, and alcohol

offenses under Chapter 18B for which magistrates and clerks of court may accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor, and to take such further action as may be found practicable and desirable to promote the uniform administration of justice.

(b) The chief district judges shall prescribe a multicopy uniform traffic ticket and complaint for exclusive use in each county of the State not later than December 31, 1970."

Sec. 2. This act is effective upon ratification, and applies to all offenses committed on or after January 1, 1992.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

S.B. 330 **CHAPTER 152**

AN ACT TO MAKE THE OBSTRUCTION OF STREAMS AND DITCHES A STRICT LIABILITY OFFENSE, TO INCREASE THE PENALTIES FOR THE OBSTRUCTION OF STREAMS AND DITCHES, AND TO REDEFINE THE AUTHORITY OF FOREST LAW ENFORCEMENT OFFICERS TO ENFORCE THE PROHIBITION AGAINST OBSTRUCTION OF STREAMS AND DITCHES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 77-13 reads as rewritten:

"*§ 77-13. Obstructing streams a misdemeanor.*

If any ~~person~~ person, firm, or corporation shall ~~willfully~~ fell any tree, or ~~willfully~~ put any obstruction, except for the purposes of utilizing water as a motive power, in any branch, ~~creek,~~ creek, stream, or other natural passage for water, whereby the natural flow of water through such passage is lessened or retarded, ~~and~~ or whereby the navigation of such stream ~~by any raft or flat~~ may be impeded, delayed, or prevented, the ~~person~~ person, firm, or corporation so offending shall be guilty of a misdemeanor, and fined not to exceed ~~fifty dollars ($50.00),~~ five hundred dollars ($500.00), or imprisoned not to exceed ~~30 days.~~ six months, or both, in the discretion of the court. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and

restoration shall be paid to the enforcing agency by the offending party. Nothing in this section shall prevent the erection of fish dams or hedges across any stream which do not extend across more than two thirds of ~~the~~ its width ~~of any stream where erected, but if extending over~~ at the point of obstruction. If the fish dams or hedges extend more than two thirds of the width of any stream, the said penalties shall attach. This section may be enforced by marine fisheries ~~inspectors,~~ inspectors and wildlife ~~protectors,~~ protectors. Within the bounds of any county or municipality, this section may also be enforced by any law enforcement officer having territorial jurisdiction, or by the county engineer. This section may also be enforced by ~~or~~ specially commissioned forest law-enforcement officers of the Department of Environment, Health, and Natural ~~Resources.~~ Resources for offenses occurring in woodlands. For purposes of this section, the term 'woodlands' means all forested areas, including swamp and timber lands, cutover lands, and second-growth stands in previously cultivated sites. ~~In any county with a population in excess of 325,000, this section may also be enforced by the county engineer.~~"

Sec. 2. G.S. 77-14 reads as rewritten:

"*§ 77-14. Obstructions in streams and drainage ditches.*

If any person, firm or corporation shall fell any tree or put any slabs, stumpage, sawdust, shavings, lime, refuse or any other substances in any creek, stream, river or natural or artificial drainage ravine or ditch, or in any other outlet which serves to remove water from any land whatsoever whereby the ~~natural and normal~~ drainage of said land is impeded, delayed or prevented, the person, firm or corporation so offending shall be guilty of a misdemeanor and upon conviction thereof shall be fined up to five hundred dollars ($500.00) or imprisoned for up to six months, or both, in the discretion of the court: Provided, however, nothing herein shall prevent the construction of any dam or weir not otherwise prohibited by any valid local or State statute or regulation. In addition to any fine or imprisonment imposed, the court may, in its discretion, order the person, firm, or corporation so offending to remove the obstruction and restore the affected waterway to an undisturbed condition, or allow authorized employees of the enforcing agency to enter upon the property and accomplish the removal of the obstruction and the restoration of the waterway to an undisturbed condition, in which case the costs of the removal and restoration shall be paid to the enforcing agency by the offending party. This section may be enforced by marine fisheries ~~inspectors,~~ inspectors and wildlife ~~protectors,~~ protectors. Within the boundaries of any county or municipality this section may also be enforced by any law enforcement officer having

territorial jurisdiction, or by the county engineer. This section may also be enforced by ~~or~~ specially commissioned forest law-enforcement officers of the Department of Environment, Health, and Natural ~~Resources.~~ Resources for offenses occurring in woodlands. For purposes of this section, the term 'woodlands' means all forested areas, including swamp and timber lands, cutover lands and second-growth stands on previously cultivated sites. ~~In any county with a population in excess of 325,000, this section may also be enforced by the county engineer.~~"

Sec. 3. This act is effective upon ratification, and applies to acts committed on or after that date.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

S.B. 414 **CHAPTER 153**

AN ACT TO AMEND THE REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 59-204(a) reads as rewritten:

"(a) Each certificate required by this Article to be filed in the office of the Secretary of State shall be executed in the following manner:

(1) An original certificate of limited partnership must be signed by all general partners;

(2) A certificate of amendment must be signed by ~~all general partners~~ at least one general partner and by each other partner designated in the certificate as a new general partner; and

(3) A certificate of cancellation must be signed by all general partners."

Sec. 2. G.S. 59-206 reads as rewritten:

"§ *59-206. Filing ~~in office of Secretary of State.~~ requirements.*

(a) Whenever the provisions of this Article require any document relating to a limited partnership to be executed and filed in accordance with this Article, unless otherwise specifically stated in this Article:

(1) There shall be an original executed document and also one conformed copy.

(2) The original document so signed, together with the conformed copy, shall be delivered to the Secretary of State. Unless he finds that it does not conform to law, the Secretary of State shall, when the proper fees have been tendered, endorse upon the original the word 'filed' and the hour, day, month and year of the filing thereof and

shall file the same in his office. The Secretary of State shall thereupon immediately compare the copy with the original and if he finds that they are identical he shall make upon the conformed copy the same endorsement which appears on the original and shall attach to the copy a certificate stating that attached thereto is a true copy of the document, designated by an appropriate title, filed in his office and showing the date of such filing. He shall thereupon return the copy so certified to the limited partnership or its representatives.

~~(3) The copy certificate as aforesaid, shall, within 60 days after the receipt by the limited partnership or its representative be delivered to the register of deeds of the county wherein the limited partnership has its registered office, and, when the proper fees shall have been tendered, it shall be recorded and properly indexed as is customary for partnerships. Promptly after the recordation, the register of deeds shall note the fact of recordation on the said copy and return it to the limited partnership or its representatives.~~

(3a) Whenever the name of any domestic or foreign limited partnership holding title to real property in this State is changed upon amendment to the certificate of limited partnership, a certificate reciting such change or transfer shall be recorded in the office of the register of deeds of the county where the property lies, or if the property is located in more than one county, then in each county where any portion of the property lies.

(4) The Secretary of State shall adopt uniform certificates to be furnished for registration in accordance with this section. In the case of a foreign limited partnership, a similar certificate by any competent authority of the jurisdiction under which the limited partnership is organized may be registered in accordance with this section.

(5) The certificate required by this section shall be recorded by the register of deeds in the same manner as deeds, and for the same fees, but no formalities as to acknowledgement, probate, or approval by any other officer shall be required. The former name of the limited partnership holding title to the real property before the amendment shall appear in the 'Grantor' index, and the amended name of the limited partnership holding title to the real property by virtue of the amendment shall appear in the 'Grantee' index.

~~(b) Any such document required to be filed shall be completely effective when endorsed by the Secretary of State as provided in~~

~~subsection (a)(2) above and the transaction to be effectuated thereby shall thereupon be deemed to be completely consummated as if all the required recording had been perfected, provided, however, that in lieu of the time of such endorsement by the Secretary of State, such document may fix an hour, day, month and year not more than 20 days subsequent to the endorsement of the Secretary of State and the transaction shall be deemed to be completely consummated at the time fixed by such document as if all the required recording had been perfected.~~

(b1) Except as provided in subsection (b2), a document accepted for filing is effective:

(1) At the time of filing on the date it is filed, as evidenced by the Secretary of State's date and time endorsement on the original document; or

(2) At the time specified in the document as its effective time on the date it is filed.

(b2) A document may specify a delayed effective time and date, and if it does so the document becomes effective at the time and date specified. If a delayed effective date but not time is specified, the document is effective at 11:59:59 p.m. on that date. A delayed effective date for a document may not be later than the ninetieth day after the date it is filed.

(b3) The fact that a document has become effective under this section does not determine its validity or invalidity or the correctness or incorrectness of the information contained in the document.

(c) It shall be the duty of the Secretary of State, whenever so requested and upon tender of the proper fees, to certify as aforesaid any true copy of any such document on file in his office, or if such be the request, to make or cause to be made typewritten or photostatic copies of such documents and to certify the same as aforesaid."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 326 **CHAPTER 154**

AN ACT TO AUTHORIZE THE TOWN OF ROWLAND TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1028 of the 1983 Session Laws, as amended by Chapter 935 of the 1987 Session Laws, reads as rewritten:

"CHAPTER 1028
"HOUSE BILL 1615

"AN ACT AUTHORIZING THE CITY OF LUMBERTON AND THE TOWN OF ROWLAND TO LEVY A TRANSIENT OCCUPANCY TAX.

"The General Assembly of North Carolina enacts:

"Section 1. Section 37 of Chapter 908 of the 1983 Session Laws is amended by deleting the second sentence of that section and substituting the following:

'Except in the City of ~~Lumberton,~~ Lumberton and the Town of Rowland, this tax applies to the rental of accommodations subject to sales tax under G.S. ~~105-164.4(3)~~ 105-164.4(a)(3) and to the rental of all private residences and cottages, regardless whether the residence or cottage is rented for less than 15 days. In the City of ~~Lumberton,~~ Lumberton and the Town of Rowland, this tax applies only to the rental of accommodations subject to sales tax under G.S. ~~105-164.4(3),~~ 105-164.4(a)(3).'

"Sec. 2. Section 44 of Chapter 908 of the 1983 Session ~~Laws is amended by adding the City of Lumberton in the appropriate alphabetical order.~~ Laws, as amended by Chapter 985 of the 1983 Session Laws, is rewritten to read: 'The City of Lumberton and the Towns of Long Beach, Ocean Isle Beach, Rowland, Surf City, and Topsail Beach.'

"Sec. 3.1. The ~~second~~ third sentence of Section 40 of Chapter 908, Session Laws of 1983, is amended by deleting 'As' and inserting in lieu thereof 'Except in the City of ~~Lumberton,~~ Lumberton and the Town of Rowland, as'.

"Sec. 3.2. Section 40 of Chapter 908, Session Laws of 1983, is amended by adding the following at the end:

'In the City of ~~Lumberton,~~ Lumberton and the Town of Rowland, these funds may be used only for "tourism related expenditures". As used in this paragraph, the term "tourism related expenditures" includes sponsoring tourist-oriented events, encouraging tourism through advertising and promotion, establishing a visitors' center, and other expenditures that directly enhance tourism, and also includes the following type of expenditures:

Criminal justice system, fire protection, public facilities and utilities, health facilities, and solid waste and sewage treatment.

These funds may not be used for services normally provided by the city or town on behalf of its citizens unless these services promote tourism and enlarge its economic benefits by enhancing the ability of the city or town to attract and provide for tourists.'

"Sec. 4. This act is effective upon ratification."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 340 **CHAPTER 155**

AN ACT TO AUTHORIZE CURRITUCK COUNTY TO LEVY AN ADDITIONAL ONE PERCENT OCCUPANCY TAX AND TO USE THE PROCEEDS OF THE ADDITIONAL TAX FOR THE CURRITUCK WILDLIFE MUSEUM.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 209 of the 1987 Session Laws reads as rewritten:

"Section 1. Occupancy tax. (a) Authorization and scope. The Currituck County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. ~~105-164.4(3),~~ 105-164.4(a)(3), or from the rental of a campsite within the county. This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose.

(a1) Additional occupancy tax. In addition to the tax authorized by subsection (a) of this section, the Currituck County Board of Commissioners may levy a room occupancy tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under subsection (a). The levy, collection, administration, and repeal of the tax authorized by this subsection shall be in accordance with the provisions of this act. Currituck County may not levy a tax under this subsection unless it also levies the tax under subsection (a).

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Currituck County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to

ensure the full collection of the tax. ~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed with the county tax collector under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both. The Board of Commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.

(e) Use of tax revenue. Currituck County shall use at least seventy-five percent (75%) of the net proceeds of the tax levied under subsection (a) of this section only for tourist related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services. The remainder of the net proceeds of the tax levied under subsection (a) shall be deposited in the Currituck County General Fund and may be used for any lawful purpose. Currituck County may use the net proceeds of the tax levied under subsection (a1) of this section, to the extent that they are needed, for capital costs, operation, and maintenance of the Currituck Wildlife Museum. Whatever is not needed for the capital costs,

operation, and maintenance of the Currituck Wildlife Museum shall be used for tourist-related purposes. As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Currituck County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 344 **CHAPTER 156**

AN ACT TO AMEND THE GENERAL STATUTES CONCERNING WATER POLLUTION PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1 reads as rewritten:

"*§ 143-215.1. Control of sources of water pollution; permit required.*

(a) Activities for Which Permits Required. -- No person shall do any of the following things or carry out any of the following activities until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Make any outlets into the waters of the State;

(2) Construct or operate any sewer system, treatment works, or disposal system within the State;

(3) Alter, extend, or change the construction or method of operation of any sewer system, treatment works, or disposal system within the State;

(4) Increase the quantity of waste discharged through any outlet or processed in any treatment works or disposal system to any extent which would result in any violation of the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters to the extent of violating any of the standards applicable to such water;

(5) Change the nature of the waste discharged through any disposal system in any way which would exceed the effluent standards or limitations established for any point source or which would adversely affect the condition of the receiving waters in relation to any of the standards applicable to such waters;

(6) Cause or permit any waste, directly or indirectly, to be discharged to or in any manner intermixed with the waters of the State in violation of the water quality standards applicable to the assigned classifications or in violation of any effluent standards or limitations established for any point source, unless allowed as a condition of any permit, special order or other appropriate instrument issued or entered into by the Commission under the provisions of this Article;

(7) Cause or permit any wastes for which pretreatment is required by pretreatment standards to be discharged, directly or indirectly, from a pretreatment facility to any disposal system or to alter, extend or change the construction or method of operation or increase the quantity or change the nature of the waste discharged from or processed in such facility;

(8) Enter into a contract for the construction and installation of any outlet, sewer system, treatment works, pretreatment facility or disposal system or for the alteration or extension of any such facilities;

(9) Dispose of sludge resulting from the operation of a treatment works, including the removal of in-place sewage sludge from one location and its deposit at another location, consistent with the requirement of the Resource Conservation and Recovery Act and regulations promulgated pursuant thereto;

(10) Cause or permit any pollutant to enter into a defined managed area of the State's waters for the maintenance or production of harvestable freshwater, estuarine, or marine plants or ~~animals.~~ animals;

(11) Cause or permit discharges regulated under G.S. 143-214.7 which result in water pollution.

In the event that both effluent standards or limitations and classifications and water quality standards are applicable to any point source or sources and to the waters to which they discharge, the more stringent among the standards established by the Commission shall be applicable and controlling.

In connection with the above, no such permit shall be granted for the disposal of waste in waters classified as sources of public water supply where the head of the agency which administers the public water supply program pursuant to Article 10 of Chapter 130A of the General Statutes, after review of the plans and specifications for the proposed disposal facility, determines and advises the Commission that such disposal is sufficiently close to the intake works or proposed intake works of a public water supply as to have an adverse effect on the public health.

In any case where the Commission denies a permit, it shall state in writing the reason for such denial and shall also state the Commission's estimate of the changes in the applicant's proposed activities or plans which will be required in order that the applicant may obtain a permit.

(b) Commission's Power as to Permits. --

(1) The Commission shall act on all permits so as to prevent, so far as reasonably possible, considering relevant standards under State and federal laws, any significant increase in pollution of the waters of the State from any new or enlarged sources. No permit shall be denied and no condition shall be attached to the permit, except when the Commission finds such denial or such conditions necessary to effectuate the purposes of this Article.

(2) The Commission shall also act on all permits so as to prevent violation of water quality standards due to the cumulative effects of permit decisions. Cumulative effects are impacts attributable to the collective effects of a number of projects and include the effects of additional projects similar to the requested permit in areas available for development in the vicinity. All permit decisions shall require that the practicable waste treatment and disposal alternative with the least adverse impact on the environment be utilized.

(3) General permits may be issued under rules adopted pursuant to Chapter 150B of the General Statutes. Such rules may provide that minor activities may occur under a general permit issued in accordance with conditions set out

in such rules. All persons covered under general permits shall be subject to all enforcement procedures and remedies applicable under this Article.

(4) The Commission shall have the power:

a. To grant a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this Article.

b. To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

1. Is financially qualified to carry out the activity for which the permit is required under subsection (a) of this section; and

2. Has substantially complied with the effluent standards and limitations and waste management treatment practices applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with other federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition).

c. To modify or revoke any permit upon not less than 60 days' written notice to any person affected.

d. To designate certain classes of minor activities for which a general permit may be issued, after considering:

1. The environmental impact of the activities;

2. How often the activities are carried out;

3. The need for individual permit oversight; and

4. The need for public review and comment on individual permits.

e. To designate certain classes of minor activities for which:

1. Performance conditions may be established by rule; and

2. Individual or general permits are not required.

~~(b1) The Commission shall adopt rules which exempt the filter backwash facilities of swimming pools and spas from the:~~

~~(1) Application and notice requirements of this section;~~

~~(2) Reporting requirements of G.S. 143-215.65;~~

~~(3) Monitoring requirements of G.S. 143-215.66; and~~

~~(4) Requirements of subsection (a) of this section that the Department review and approve of each individual facility.~~

(c) Applications for Permits and Renewals for Facilities Discharging to the Surface Waters. --

(1) All applications for permits and for renewal of existing permits for outlets and point sources and for treatment works and disposal systems discharging to the surface waters of the State shall be in writing, and the Commission may prescribe the form of such applications. All applications shall be filed with the Commission at least 180 days in advance of the date on which it is desired to commence the discharge of wastes or the date on which an existing permit expires, as the case may be. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application.

(2) a. The Department shall refer each application for permit, or renewal of an existing permit, for outlets and point sources and treatment works and disposal systems discharging to the surface waters of the State to its staff for written evaluation and proposed determination with regard to issuance or denial of the permit. If the Commission concurs in the proposed determination, it shall give notice of intent to issue or deny the permit, along with any other data that the Commission may determine appropriate, to be given to the appropriate State, interstate and federal agencies, to interested persons, and to the public. The Commission shall prescribe the form and content of the notice.

The notice required herein shall be given at least 45 days prior to any proposed final action granting or denying the permit. Public notice shall be given by publication of the notice one time in a newspaper having general circulation within the county.

b. Repealed by Session Laws 1987, c. 734.

(3) If any person desires a public meeting on any application for permit or renewal of an existing permit provided for in this subsection, he shall so request in writing to the Commission within 30 days following date of the notice of intent. The Commission shall consider all such requests for meeting, and if the Commission determines that there is

a significant public interest in holding such meeting, at least 30 days' notice of such meeting shall be given to all persons to whom notice of intent was sent and to any other person requesting notice. At least 30 days prior to the date of meeting, the Commission shall also cause a copy of the notice thereof to be published at least one time in a newspaper having general circulation in such county. In any county in which there is more than one newspaper having general circulation in that county, the Commission shall cause a copy of such notice to be published in as many newspapers having general circulation in the county as the Commission in its discretion determines may be necessary to assure that such notice is generally available throughout the county. The Commission shall prescribe the form and content of the notices.

The Commission shall prescribe the procedures to be followed in such meetings. If the meeting is not conducted by the Commission, detailed minutes of the meeting shall be kept and shall be submitted, along with any other written comments, exhibits or documents presented at the meeting, to the Commission for its consideration prior to final action granting or denying the permit.

(4) Not later than 60 days following notice of intent or, if a public hearing is held, within 90 days following consideration of the matters and things presented at such hearing, the Commission shall grant or deny any application for issuance of a new permit or for renewal of an existing permit. All permits or renewals issued by the Commission and all decisions denying application for permit or renewal shall be in writing.

(5) No permit issued pursuant to this subsection (c) shall be issued or renewed for a term exceeding five years.

(6) The Commission shall not act upon an application for a new nonmunicipal domestic wastewater discharge facility until it has received a written statement from each city and county government having jurisdiction over any part of the lands on which the proposed facility and its appurtenances are to be located which states whether the city or county has in effect a zoning or subdivision ordinance and, if such an ordinance is in effect, whether the proposed facility is consistent with the ordinance. The Commission shall not approve a permit application for any facility which a city or county has determined to be inconsistent with its zoning or subdivision ordinance unless it determines that the approval

of such application has statewide significance and is in the best interest of the State. An applicant for a permit shall request that each city and county government having jurisdiction issue the statement required by this subdivision by mailing by certified mail, return receipt requested, a written request for such statement and a copy of the draft permit application to the clerk of the city or county. If a local government fails to mail the statement required by this subdivision, as evidenced by a postmark, within 15 days after receiving and signing for the certified mail, the Commission may proceed to consider the permit application notwithstanding this subdivision.

(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State. -- All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for disposal systems or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving such facilities pursuant to this subsection (d) shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(d1) Each applicant under subsections (c) or (d) for a permit (or the renewal thereof) for the operation of a treatment works for a private multi-family or single family residential development, in which the owners of individual residential units are required to organize as a lawfully constituted and incorporated homeowners' association of a subdivision, condominium, planned unit development, or townhouse complex, shall be required to enter into an operational agreement with the Commission as a condition of any such permit granted. The agreement shall address, as necessary, construction, operation, maintenance, assurance of financial solvency, transfers of ownership

and abandonment of the plant, systems, or works, and shall be modified as necessary to reflect any changed condition at the treatment plant or in the development. Where the Commission finds appropriate, it may require any other private residential subdivision, condominium, planned unit development or townhouse complex which is served by a private treatment works and does not have a lawfully constituted and incorporated homeowners' association, and for which an applicant applies for a permit or the renewal thereof under subsections (c) or (d), to incorporate as a lawfully constituted homeowners' association, and after such incorporation, to enter into an operational agreement with the Commission and the applicant as a condition of any permit granted under subsections (c) or (d). The local government unit or units having jurisdiction over the development shall receive notice of the application within an established comment period and prior to final decision.

(e) Administrative Review. -- A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision is final and is not subject to review.

(f) Local Permit Programs for Sewer Extension. -- Municipalities, counties, local boards or commissions, water and sewer authorities, or groups of municipalities and counties may establish and administer within their utility service areas their own general permit programs in lieu of State permit required in G.S. 143-215.1(a)(2), (3), and (8) above, for construction, operation, alteration, extension, change of proposed or existing sewer system, subject to the prior certification of the Commission. For purposes of this subsection, the service area of a municipality shall include only that area within the corporate limits of the municipality and that area outside a municipality in its extraterritorial jurisdiction where sewer service is already being provided by the municipality to the permit applicant or connection to the municipal sewer system is immediately available to the applicant; the service areas of counties and the other entities or groups shall include only those areas where sewer service is already being provided to the applicant by the permitting authority or connection to the permitting authority's system is immediately available. No later than the 180th day after the receipt of a program and statement submitted by any local government, commission, authority, or board the Commission shall certify any local program that:

(1) Provides by ordinance or local law for requirements compatible with those imposed by this Part and the rules implementing this Part;

(2) Provides that the Department receives notice and a copy of each application for a permit and that it receives copies of approved permits and ~~plans;~~ plans upon request by the Commission;

(3) Provides that plans and specifications for all construction, extensions, alterations, and changes be prepared by or under the direct supervision of an engineer licensed to practice in this State;

(4) Provides for the adequate enforcement of the program requirements by appropriate administrative and judicial process;

(5) Provides for the adequate administrative organization, engineering staff, financial and other resources necessary to effectively carry out its plan review program;

(6) Provides that the system is capable of interconnection at an appropriate time with an expanding municipal, county, or regional system;

(7) Provides for the adequate arrangement for the continued operation, service, and maintenance of the sewer system; and

(8) Is approved by the Commission as adequate to meet the requirements of this Part and the rules implementing this Part.

The Commission may deny, suspend, or revoke certification of a local program upon a finding that a violation of the provisions in subsection (f) of this section has occurred. A denial, suspension, or revocation of a certification of a local program shall be made only after notice and a public hearing. If the failure of a local program to carry out this subsection creates an imminent hazard, the Commission may summarily revoke the certification of the local program. Chapter 150B of the General Statutes does not apply to proceedings under this subsection.

Notwithstanding any other provision of this subsection, if the Commission determines that a sewer system, treatment works, or disposal system is operating in violation of the provisions of this Article and that the appropriate local authorities have not acted to enforce those provisions, the Commission may, after written notice to the appropriate local government, take enforcement action in accordance with the provisions of this Article.

(g) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and

projected plans to reduce the discharge of waste and pollutants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification."

Sec. 2. This act is effective October 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 462 **CHAPTER 157**

AN ACT TO AUTHORIZE DEPARTMENT OF REVENUE EMPLOYEES TO SERVE CIVIL SUMMONSES AND OTHER CIVIL PAPERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-258 reads as rewritten:

"*§ 105-258. Powers of Secretary of Revenue; who may sign and verify ~~pleadings, legal documents, etc.~~ legal documents; who may serve civil papers.*

(a) Secretary May Examine Data and Summon Persons. The Secretary of Revenue, for the purpose of ascertaining the correctness of any return, making a return where none has been made, or determining the liability of any person for any tax imposed by this Subchapter, or collecting any such tax, shall have the power to examine, personally, or by an agent designated by him, any books, papers, records, or other data which may be relevant or material to such inquiry, and the Secretary may summon the person liable for the tax or required to perform the act, or any officer or employee of such person, or any person having possession, custody, care or control of books of account containing entries relevant or material to the income and expenditures of the person liable for the tax or required to perform the act, or any other person having knowledge in the premises, to appear before the Secretary, or his agent, at a time and place named in the summons, and to produce such books, papers, records or other data, and to give such testimony under oath as may be relevant or material to such inquiry, and the Secretary or his agent may administer oaths to such person or persons. If any person so summoned refuses to obey such summons or to give testimony when summoned, the Secretary may apply to the Superior Court of Wake County for an order requiring such person or persons to comply with

the summons of the Secretary, and the failure to comply with such court order shall be punished as for contempt.

(b) Department Employees May Sign and Verify Legal Documents. In ~~any action, proceeding, or matter of any kind,~~ a matter to which the Secretary of Revenue is a party or in which ~~he may have~~ the Secretary has an interest, all ~~pleadings, legal notices, proofs of claim, warrants for collection, certificates of tax liability, executions, and other~~ legal documents may be signed and verified on behalf of the Secretary by (i) a Deputy or Assistant ~~Secretary or by~~ Secretary; (ii) any director or assistant director of any division of the Department of ~~Revenue or by~~ Revenue; or (iii) any other agent or employee of the Department so authorized by the Secretary of Revenue.

(c) Department Employees May Serve Civil Papers. In a civil matter to which the Secretary of Revenue is a party or in which the Secretary has an interest, any agent or employee of the Department of Revenue may serve summonses and other legal documents lawfully issued when so authorized by the Secretary of Revenue."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 592 **CHAPTER 158**

AN ACT TO AUTHORIZE THE CITY OF WASHINGTON TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax.

(a) Authorization and scope. The Washington City Council may by ordinance, after not less than 10 days public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the city that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, by summer camps, or by businesses that offer to rent no more than five units.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and

charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the city. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses and persons in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The city shall administer a tax levied under this section. A tax levied under this section is due and payable to the city finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the city finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The city council may, for good cause shown, compromise the civil penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. The City of Washington shall, on a monthly basis, remit the net proceeds of the occupancy tax to the City of Washington Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the City of Washington through advertising and promotion, to sponsor tourism-oriented events and activities in the City of Washington, and to finance tourist-related capital projects in the City of Washington. As used in this subsection, "net proceeds" means gross proceeds less the cost to

the city of administering and collecting the tax, which may not exceed five percent (5%) of the gross proceeds.

(f) Effective date of levy. A tax under this section shall become effective on the date specified in the ordinance levying the tax. That date must be the first day of a calendar month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Washington City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority.

(a) Appointment and membership. When the City Council adopts an ordinance levying a room occupancy tax under this act, it shall also adopt an ordinance creating the City of Washington Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The ordinance shall provide that the Authority shall be composed of seven members, as follows:

(1) A Washington City Council member appointed by the city council.

(2) Three owners or operators of motels, hotels, or other taxable accommodations in the City of Washington that have at least 48 units, appointed as follows: two by the Washington City Council and one by the Greater Washington Chamber of Commerce.

(3) Two individuals involved in the tourist business who have demonstrated an interest in tourist development and do not own or operate hotels, motels, or other taxable tourist accommodations, appointed as follows: one by the Washington City Council and one by the Greater Washington Chamber of Commerce.

(4) One member of the Board of Directors of the Greater Washington Chamber of Commerce, appointed by the chamber of commerce.

All members of the Authority shall serve without compensation. Vacancies shall be filled in the same manner as original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term. Within 30 days after appointment, the Authority shall elect its Chair from among the members and create and fill other offices as it wishes. The term of Chair shall be one year with

eligibility for reelection. No member may serve as Chair more than two one-year terms in succession. The Authority shall meet at the call of the Chair or of any three members and shall adopt rules of procedure to govern its meetings. The Finance Officer for the City of Washington shall be the ex officio finance officer of the Authority.

(b) Terms of office. Members of the Authority shall serve three-year terms except that the initial appointees shall serve the following terms:

(1) Members appointed pursuant to subdivisions (a)(1) and (a)(3) of this section shall serve one-year terms.

(2) Of the members appointed pursuant to subdivision (a)(2) of this section, the appointees of the Washington City Council shall serve a three-year term and the appointee of the chamber of commerce shall serve a two-year term.

(c) Power and duties. The Authority may contract with any person, firm, or agency to assist it in carrying out the purposes for which the tax proceeds levied by this act may be expended. The city council may from time to time determine an appropriate percentage of net proceeds that may be expended by the Authority for administrative services.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the Washington City Council on its receipts and expenditures for the preceding quarter and for the year in such detail as the council may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 603 **CHAPTER 159**

AN ACT TO PROVIDE FOR THE REGISTRATION OF LAND IN GRANVILLE COUNTY AND TO REQUIRE ANY PERSON HUNTING OR POSSESSING A FIREARM OR BOW AND ARROW THAT IS READILY AVAILABLE FOR USE TO SECURE AN ENTRY PERMIT BEFORE ENTERING OR REMAINING ON REGISTERED LAND OR REMAINING ON ABUTTING PORTIONS OF HIGHWAY.

The General Assembly of North Carolina enacts:

Section 1. Definitions. The definitions in Article 12 of Chapter 113 of the General Statutes of North Carolina apply in the construction of this act. In addition, the following definitions apply:

(1) Abutting Portion of Highway. The portion of a highway immediately abutting registered land. This immediately

abutting portion extends from the center of the main-traveled portion to the right-of-way boundary shared with the registered land.

(2) Entry Permit. The permit described in Section 3.

(3) Highway. The entire distance between right-of-way property lines of every public roadway.

(4) Possessor of Land. A person who owns land, is a lessee in general possession of land, or is the lessee of hunting rights on the land.

(5) Registered Land. Land that has been accepted for registration by the sheriff and published as such, and which has not been deleted from registration.

(6) Registrant. A current applicant of record for a tract of registered land.

(7) Sheriff. The Sheriff of Granville County or any of his deputies or employees authorized to perform the duties under this act.

Sec. 2. Registration procedure.

(a) A person who possesses land and wishes to register it under this act must apply to the sheriff in accordance with this section.

(b) A new registration application or a renewal application containing an amendment of the boundaries of the tract of registered land must be filed with the sheriff between July 1 and August 1 and must contain:

(1) A statement under oath by the applicant that he is the possessor of the tract of land to be registered. If the applicant is not an owner, he must file a copy of his lease or other document granting him his right of general possession of or the control of hunting rights on the land.

(2) Three copies of a description of the tract that will allow law enforcement officers to determine in the field, and prove in court, whether an individual is within the boundaries of the tract. This description may take the form of a map, plat, aerial photograph showing boundaries, diagram keyed to known landmarks, or any other document or description that graphically demarks the boundaries with sufficient accuracy for use by officers in court and in the field.

(3) An agreement by the applicant to post the tract in accordance with the requirements of this section by August 15, and to make a continuing effort to maintain posted notices for the tract.

(4) An agreement by the applicant to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to

hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The applicant must file the name and signature of any agent authorized by him to issue the entry permit.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of any agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of ten dollars ($10.00) to cover the administrative costs of processing the registration application.

(c) An application for annual renewal of registration in which there is no change of boundaries of the tract must be filed with the sheriff between July 1 and August 1 and must contain:

(1) A statement under oath by the applicant that he remains the possessor of the tract of registered land.

(2) A statement under oath that every posted notice required by this section has been reviewed within the 30 days preceding the application and a specification as to any failure of compliance with the posting requirements. If there is any such failure, the registrant must agree to bring his tract of registered land into full compliance with posting requirements by August 15.

(3) An agreement to make a continuing effort to maintain posted notices for the tract.

(4) An agreement to issue or cause issuance of an entry permit to all individuals not exempted by Section 5(c) to whom he or his authorized agent gives permission to hunt, or to possess a firearm or bow and arrow that is readily available for use, on the tract or on any highway adjacent to the tract. The registrant must list the name of each agent currently authorized by him to issue the entry permit, and must file the name and signature of any agent newly so authorized.

(5) An agreement to notify the sheriff in writing immediately upon rescinding the authority of an agent and to file the name and signature of any new agent with the sheriff.

(6) A fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application.

(d) Within 20 days after a registrant loses his status as the possessor of all or any part of a tract of registered land, he must notify the sheriff of this fact. If there is a new possessor who wishes to retain the land's registered status, and there will be no change as to the overall boundaries of registered land, the new possessor may within 20 days after gaining this status apply to the sheriff to have the former registrant's application amended to designate him as the

possessor of the transferred tract or portion of the tract. The amended application must contain all the provisions of a renewal application under subsection (c), and the new possessor must pay a fee of five dollars ($5.00) to cover the administrative costs of processing the renewal application. If there is any lapse as to the registered status of the land or any change as to boundaries of registered land, application must be made between July 1 and August 1 under the provisions of subsection (b).

(e) The sheriff must first examine each application submitted under subsection (b) to determine whether the description of the tract will satisfy the provisions of subdivision (2). If the description is not adequate, the sheriff may in his discretion reject the application or require an amended description that does satisfy those provisions. If the application otherwise satisfies the provisions of subsection (b), the sheriff before September 1 must inspect the tract to be registered to determine whether the land is properly posted in compliance with this section. As to renewal applications, the sheriff must determine whether the provisions of subsection (c) are met. Of the applications that do meet the requirements, he must make spot checks of the tracts of land covered by these applications before September 1 for compliance with the posting requirements of this section.

(f) By September 1 each year, the sheriff must:

(1) File with the Register of Deeds of Granville County a listing of all tracts of land accepted by him for registration during the ensuing year. This listing must contain an abbreviated description of the location of each tract of land so accepted.

(2) File with the Register of Deeds a copy of the full description of the boundaries of each tract accepted for registration that year under subsection (b). As to the remaining applications accepted, the sheriff must indicate in his filing with the Register of Deeds the year in which a full description was filed for that tract that met the requirements of subdivision (2) of subsection (b).

(3) File with the North Carolina Wildlife Resources Commission all of the material required to be filed with the Register of Deeds under subdivisions (1) and (2). The sheriff must also furnish the North Carolina Wildlife Resources Commission with a copy of the signature of each registrant and agent newly authorized to issue entry permits during the ensuing year, and a listing of agents no longer authorized to issue entry permits. In addition, throughout the year as registrants make changes with respect to their authorized agents or there are amended applications that substitute registrants, the sheriff must as soon as feasible inform the

Commission of the changes and file with the Commission a copy of the signatures of new registrants and agents.

(4) Release for publication by appropriate media with coverage in Granville County the listing described in subdivision (1).

(5) Compile and maintain throughout the ensuing year in his office, so that the information is freely available to the public, all of the information covered by this subsection.

(g) Each registrant under this act must post his tract of registered land within the time limits agreed to by him in his registration application, and the registrant must from time to time inspect his registered land and repost the land to keep it in conformance with the requirements of this subsection. Posted notices must measure at least 120 square inches; contain the word "POSTED" in letters at least three inches high; state that the land is registered with the Sheriff of Granville County and that hunting and the possession of weapons are prohibited without an entry permit. Notices must be conspicuously posted not more than 200 yards apart close to and along the boundaries of the tract. In any event, at least one notice must be placed on each side of the registered tract, one at each corner, one facing toward the traveled portion of each abutting highway, and one at each point of entry. A point of entry is where a roadway, trail, path, or other way likely to be used by entering hunters and weapons possessors leads into the tract. Notices posted along the boundaries of a tract must face in the direction that they will most likely be seen by hunters and weapons possessors.

(h) Any law enforcement officer or any employee of the North Carolina Wildlife Resources Commission who determines that a registrant has failed to keep registered property posted in substantial compliance with this section must so notify the registrant or his agent. If within a reasonable time after notice the registrant fails to take steps to post or repost the tract, or if without regard to notice a registrant is inexcusably or repeatedly negligent in failing to keep the tract properly posted, the sheriff upon learning of this must immediately delete registration of the tract, notify the registrant, or the present possessor if the registrant is no longer a possessor, and require that the responsible person remove any remaining posted notices.

(i) When there is no renewal of an application for registration, when the sheriff learns that a registrant is no longer the possessor of a registered tract of land and there has been no timely application by the new possessor to amend the registration, or when a registrant requests that his tract of land be deleted from registration, the sheriff must immediately delete the registration of the tract, notify the current possessor of his action, and require him to remove all posted notices.

(j) A possessor's failure to cause the removal of all posted signs within a reasonable time after receipt of notice that the tract has been deleted from registration is a misdemeanor punishable in the discretion of the court.

Sec. 3. Entry permits and posted notices furnished by sheriff.

(a) Upon initial or renewal registration of a tract of land, the sheriff must furnish the registrant with a reasonable number of entry permit forms to be carried by individuals given permission to hunt, or possess a firearm or bow and arrow that is readily available for use, on the registered land or on any highway abutting the registered land. The sheriff must establish a procedure for resupplying registrants and their agents with entry permit forms for their registered land as needed.

(b) To be valid, the entry permit must be issued and dated within the previous 12 months and signed by the registrant, or by an authorized agent of the registrant whose signature is on file with the sheriff.

(c) The sheriff must procure a stock of posted notices that meet the requirements of subsection (g) of Section 2 of this act and, upon initial or renewal registration, furnish the registrant with a sufficient number of posted notices that he may comply with the posting requirements of this act. The sheriff must establish a procedure for supplying registrants with additional posted notices as needed for reposting in compliance with this act.

Sec. 4. Affirmative duty of hunters and weapons possessors to determine if land is registered. Every individual who enters the land of another to hunt or who is in possession of a firearm or a bow and arrow that is readily available for use and every individual who hunts or discharges a firearm while upon a highway or the land of another is first under a duty to:

(1) Make appropriate inquiries to determine whether the land on which hunting or the possession of weapons will occur is registered land;

(2) Make appropriate inquiries to determine whether the land abutting the portion of highway on which hunting or the possession of weapons will occur is registered land; and

(3) Look for posted notices that may warn him of the registered status of any land on which hunting or the possession of weapons will occur and for posted notices on the land abutting the portion of the highway on which hunting or the possession of weapons will occur.

Sec. 5. Hunting or possessing weapons without permission on registered land or on abutting portions of highway; exceptions.

(a) No one may hunt or possess a firearm or bow and arrow that is readily available for use, or enter to hunt or while in possession of a firearm or bow and arrow that is readily available for use, on registered land without having in possession a valid entry permit for that land issued to him.

(b) No one may hunt or possess a firearm or bow and arrow that is readily available for use on any portion of a highway that abuts registered land without having in possession a valid entry permit for the abutting land issued to him.

(c) This section does not apply to the registrant and members of his immediate family who are hunting or possessing weapons on the registrant's land or on abutting portions of highway.

(d) This section does not apply to travelers on the highway in lawful possession of weapons during the course of travel and who have not stopped or loitered on the highway for the purpose of hunting or using weapons.

Sec. 6. Removal, destruction, or mutilation of posted notices. Unauthorized removal, destruction, or mutilation of posted notices on registered land is a misdemeanor punishable by a fine of not less than fifty dollars ($50.00), imprisonment not to exceed 90 days, or both.

Sec. 7. Posting without authority. No person who is not a registrant of the land in question may erect the notices described in subsection (g) of Section 2 of this act.

Sec. 8. Publication of registration provisions by Wildlife Resources Commission. The Wildlife Resources Commission must in its general publications concerning the laws and regulations pertaining to hunting give appropriate publicity to the provisions of the act and need for hunters and weapons possessors to make the inquiries set out in Section 4.

Sec. 9. General provisions pertaining to enforcement of act.

(a) If land is registered, the original or a true copy of the application and all supporting items are admissible in evidence. The registrant's affidavit respecting the nature of his possessory interest in the tract of land registered constitutes *prima facie* evidence of the facts so asserted. The description filed with the application constitutes *prima facie* evidence of the boundaries of the registered land.

(b) If an individual hunts or possesses a weapon on any registered land or on any abutting portion of highway, or if an individual enters registered land to hunt or while in possession of a weapon, any possessor of that land, any agent of the possessor, any wildlife protector, or any law enforcement officer may request that the individual produce a valid entry permit. It is unlawful for any such individual to refuse to exhibit an entry permit.

(c) It is the duty of the sheriff, wildlife protectors, and all law enforcement officers with general enforcement jurisdiction to investigate reported violations of this act and to initiate prosecutions when they determine that violations have occurred.

(d) Any officer who determines that a violation of this act has occurred should initiate a prosecution by issuing a citation or seeking the issuance of a criminal summons unless he has reason to believe that the violator will not appear in court on the appointed date.

(e) Unless a different punishment is elsewhere provided under this act, a violation of any provision of this act is a misdemeanor punishable by a fine not to exceed fifty dollars ($50.00) or imprisonment not to exceed 30 days.

Sec. 10. This act applies only to Granville County.

Sec. 11. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 745 **CHAPTER 160**

AN ACT TO PROVIDE A GRACE PERIOD FOR MILITARY PERSONNEL TO LIST AND PAY PROPERTY TAXES AFTER DEPLOYMENT OR ACTIVE DUTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 105-360, an individual liable for property taxes for the 1990-91 tax year who, on or after August 2, 1990, was a member of the armed forces or the armed forces reserves and was deployed outside the State as a result of "Operation Desert Shield" or "Operation Desert Storm," is allowed 90 days after the end of the individual's deployment to pay the property taxes at par. For these individuals, the taxes for the 1990-91 tax year do not become delinquent until after the end of the 90-day period provided in this act, and an individual who pays the property taxes before the end of the 90-day period is not liable for interest on the taxes for the 1990-91 tax year. If the individual does not pay the taxes before the end of the 90-day period, interest shall accrue on the taxes according to the schedule provided in G.S. 105-360 as though the taxes were unpaid as of January 6, 1991.

Sec. 2. Notwithstanding G.S. 105-307, an individual required to list property for taxation for the 1991-92 tax year who, on or after August 2, 1990, was a member of the armed forces or the armed forces reserves and was deployed outside the State as a result of "Operation Desert Shield" or "Operation Desert Storm," is allowed 90 days after the end of the individual's deployment to list the

property. For these individuals, the listing period for the 1991-92 tax year is extended until the end of the 90-day period provided in this act, and an individual who lists the property before the end of the 90-day period is not subject to civil or criminal penalties for failure to list the property for the 1991-92 tax year.

Sec. 3. This act is effective retroactively as of August 2, 1990. If any penalty or interest forgiven by this act has been paid before the date this act is ratified, the taxing unit shall refund the penalty or interest.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 747 **CHAPTER 161**

AN ACT TO AUTHORIZE THE TOWNS OF MATTHEWS, MINT HILL, AND PINEVILLE AND THE CITY OF CHARLOTTE IN MECKLENBURG COUNTY TO REGULATE IN CERTAIN EXTRATERRITORIAL AREAS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Section 12 of Chapter 860 of the 1971 Session Laws, as amended by Chapter 966 of the 1983 Session Laws (Regular Session 1984), the Towns of Matthews, Mint Hill, and Pineville and the City of Charlotte may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes within extraterritorial areas in Mecklenburg County not to exceed one mile of their respective corporate limits, subject to the limitations set forth in this act.

Sec. 2. Any exercise of the authority granted by this act shall be accomplished in accordance with G.S. 160A-360, except that no approval from Mecklenburg County is required prior to such exercise.

Sec. 3. This act authorizes the exercise of extraterritorial jurisdiction only in those areas that may be annexed by each town, as set forth in and referred to as the "Sphere of Influence" in annexation agreements entered into by the Towns of Matthews, Mint Hill, and Pineville, respectively, and the City of Charlotte. The area in which the extraterritorial jurisdiction authorized by this act is to be exercised shall be specifically identified in an ordinance as required by G.S. 160A-360, and may be changed from time to time in the same manner, in accordance with the above-referenced agreement, modifications thereto, or future agreements or changed circumstances delineating areas in which the towns may annex.

Sec. 4. The authority granted by this act shall not be exercised with respect to the property acquired by Mecklenburg County from

Hazeline Massey, tax parcel number 215-062-02; the property acquired by Mecklenburg County from National Facilities Corporation, tax parcel number 215-081-15; or the property acquired by Mecklenburg County from Lester H. Yandle Jr., tax parcel numbers 215-062-01 and 215-061-06. As owner and user of the property exempted in this section, Mecklenburg County shall not cause the elevation of the property to be increased more than 25 feet above the highest point existing on the property on the date of ratification of this act, unless the increase is approved in a resolution adopted by the Board of Commissioners of the Town of Matthews.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 775 **CHAPTER 162**

AN ACT TO AUTHORIZE ALLEGHANY COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Alleghany County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by (i) a business that offers to rent fewer than five units, (ii) a summer camp for minors, or (iii) a nonprofit charitable, educational, or religious organization.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax. The county may require a taxpayer to attach to the form a

copy of the taxpayer's most recent sales tax report filed with the Secretary of Revenue.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Alleghany County shall, on a quarterly basis, remit one-half of the net proceeds of the occupancy tax to the Alleghany County Chamber of Commerce. The chamber of commerce may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in Alleghany County through State, national, and international advertising and promotion. The chamber of commerce may use no more than one percent (1%) of the funds remitted to it under this subsection for administrative expenses.

The county shall retain the remaining net proceeds of the tax and use them only for tourist-related purposes, which may include construction and maintenance of public facilities and buildings, police protection, and emergency services. As used in this subsection, "net

proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Alleghany County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 808 **CHAPTER 163**

AN ACT TO AUTHORIZE ASHE COUNTY TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Ashe County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations, or to summer camps for minors.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on

account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Use of tax revenue. Ashe County shall, on a quarterly basis, distribute one-third of the net proceeds of a tax levied under this section to the Ashe County Chamber of Commerce. The chamber of commerce may use funds distributed to it under this subsection only to promote travel and tourism in Ashe County. Ashe County may use the remaining two-thirds of the net proceeds of the occupancy tax for any public purpose.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax.

That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Ashe County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 848 **CHAPTER 164**

AN ACT TO CHANGE THE REQUIREMENTS CONCERNING THE INDEXING AND FILING OF CERTAIN UCC STATEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-9-403(4) reads as rewritten:

"(4) A filing officer shall mark each statement with a file number and with the date and hour of filing and shall hold the statement or a microfilm or other photographic copy thereof for public inspection. In addition the filing officer shall index the statement according to the name of the debtor and shall note in the index the file number ~~and the address of the debtor~~ given in the statement."

Sec. 2. G.S. 25-9-404(1) reads as rewritten:

"(1) If a financing statement covering consumer goods is filed on or after July 1, 1976, then ~~within one month or~~ within ~~10~~ 30 days ~~following written demand by the debtor~~ after there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must file with each filing officer with whom the financing statement was filed a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number and also by the most current file number if any continuation was filed. In other cases whenever there is no outstanding secured obligation and no commitment to make advances, incur obligations or otherwise give value, the secured party must ~~on written demand by the debtor send the debtor, for each~~ file with each filing officer with

whom the financing statement was filed, a termination statement to the effect that he no longer claims a security interest under the financing statement, which shall be identified by file number and also by the most current file number if any continuation was filed. A termination statement signed by a person other than the secured party of record must be accompanied by a separate written statement of assignment signed by the secured party of record and complying with subsection (2) of G.S. 25-9-405, including payment of the required fee. If the affected secured party fails to file such a termination statement as required by this ~~subsection, or to send such a termination statement~~ subsection within ~~10~~ 30 days, ~~days after proper demand therefor,~~ he shall be liable to the debtor for one hundred dollars ($100.00), and in addition for any loss caused to the debtor by such failure."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 926 **CHAPTER 165**

AN ACT TO PROVIDE THAT THE PROMOTER AND TICKET SALES AGENT MAY AGREE TO CHARGE A REASONABLE SERVICE FEE THAT EXCEEDS THREE DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-344 reads as rewritten:

"*§ 14-344. Sale of admission tickets in excess of printed price.*

Any person, firm, or corporation shall be allowed to add a reasonable service fee to the face value of the tickets sold, and the person, firm, or corporation which sells or resells such tickets shall not be permitted to recoup funds greater than the combined face value of the ~~ticket~~ ticket, tax, and the authorized service fee. This service fee may not exceed three dollars ($3.00) for each ~~ticket.~~ ticket except that a promoter or operator of the property where the event is to be held and a ticket sales agency may agree in writing on a reasonable service fee greater than three dollars ($3.00) for the first sale of tickets by the ticket sales agent. This service fee may be a preestablished amount per ticket or a percentage of each ticket. The existence of the service fee shall be made known to the public by printing or writing the amount of the fee on the tickets which are printed for the event. Any person, firm or corporation which sells or offers to sell a ticket for a price greater than the price permitted by this section shall be guilty of a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both."

Sec. 2. This act is effective upon ratification. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the provisions of this statute that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

H.B. 951 **CHAPTER 166**

AN ACT TO ALLOW A LANDLORD'S WRITTEN, SIGNED STATEMENT OF PAST-DUE RENT, MADE UPON THE TENANT'S REQUEST, TO SERVE AS NOTIFICATION OF EVICTION FOR EMERGENCY ASSISTANCE FROM THE COUNTY DEPARTMENT OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 42 of the General Statutes is amended by adding a new section to read:

"*§ 42-26.1. Landlord certification of past-due rent.*

When a tenant notifies the tenant's landlord that the tenant wants to apply for assistance with rental payments from the department of social services in the county where the tenant resides or from any agency working in cooperation with that department of social services, as provided for under G.S. 108A-39.1, the landlord shall, upon the tenant's request, provide the tenant with a written, signed statement stating any past-due rent that the tenant owes, plus any late fee, and stating that the landlord may pursue summary ejectment if the rent is not paid."

Sec. 2. G.S. 108A-39.1 reads as rewritten:

"*§ 108A-39.1. AFDC Emergency Assistance Program.*

(a) The Social Services Commission shall adopt rules to implement the Aid to Families with Dependent Children-Emergency Assistance (AFDC-EA) Program. Effective November 1, 1986, the Department of Human Resources, Division of Social Services, shall provide emergency assistance to families whose family income does not exceed one hundred ten percent (110%) of the current federal poverty level as established by the U. S. Secretary of Health and Human Services and published annually in the Federal Register. Annual program benefits may not exceed five hundred dollars ($500.00). Funding for the non-federal share of Emergency Assistance benefits shall be shared at a rate of fifty percent (50%) State participation and fifty percent (50%) county participation.

(b) A written, signed statement by a tenant's landlord, as provided for in G.S. 42-26.1, shall constitute sufficient formal notification of

eviction under the AFDC-EA Program provided for in subsection (a) of this section."

Sec. 3. This act becomes effective July 1, 1991, and expires on June 30, 1993.

In the General Assembly read three times and ratified this the 29th day of May, 1991.

S.B. 291 **CHAPTER 167**

AN ACT TO AUTHORIZE THE USE OF ELECTRONIC MEANS FOR THE DOCKETING OF CIVIL JUDGMENTS AND THE MAKING OF ENTRIES IN JUDGMENT DOCKETS AND JUDGMENT AND DOCKET BOOKS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1 of the General Statutes is amended by adding a new section to read:

"*§ 1-208.1. Judgment docket, judgment and docket book defined.*

As used in this Chapter, unless the context clearly requires otherwise, the phrases 'judgment docket', 'judgment book', 'docket book', and 'judgment and docket book' include, without limitation, all records created or maintained by the clerk of superior court, pursuant to rules prescribed by the Director of the Administrative Office of the Courts pursuant to G.S. 7A-109, by the use of an electronic data entry system established by the Director pursuant to G.S. 7A-343."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 419 **CHAPTER 168**

AN ACT TO ALLOW FILING OF COURT PAPERS BY TELEFACSIMILE TRANSMISSION PURSUANT TO RULES ESTABLISHED BY THE SUPREME COURT AND THE ADMINISTRATIVE OFFICER OF THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 5(e) reads as rewritten:

"(e) (1) Filing with the court defined. -- The filing of pleadings and other papers with the court as required by these rules shall be made by filing them with the clerk of the court, except that the judge may permit the papers to be filed with him, in which event he shall note thereon the

filing date and forthwith transmit them to the office of the clerk.

(2) Filing by telefacsimile transmission. -- If, pursuant to G.S. 7A-34 and G.S. 7A-343, the Supreme Court and the Administrative Officer of the Courts establish uniform rules, regulations, procedures and specifications for the filing of pleadings or other court papers by telefacsimile transmission, filing may be made by the transmission when, in the manner, and to the extent provided therein."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 557 **CHAPTER 169**

AN ACT TO AMEND THE CHARTER OF THE TOWN OF DANBURY.

The General Assembly of North Carolina enacts:

Section 1. Sections 3 and 4 of Chapter 1302 of the 1957 Session Laws are repealed.

Sec. 2. Chapter 1302 of the 1957 Session Laws is amended by adding a new section to read:

"Sec. 4.1. (a) Four Council members shall be elected at the regular municipal election in 1991. The two persons receiving the highest number of votes shall be elected to four-year terms, and the two persons receiving the next highest number of votes shall be elected to two-year terms. In 1993, and quadrennially thereafter, two Council members shall be elected to four-year terms.

(b) The Mayor shall continue to serve a two-year term and shall be elected at each regular municipal election.

(c) Vacancies that occur in any elective office of the Town shall be filled by appointment of the Town Council for the remainder of the unexpired term."

Sec. 3. The Council members serving on the date of ratification of this act shall serve until the expiration of their terms or until their successors are elected and qualified.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 592 **CHAPTER 170**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE JACKSON COUNTY BOARD OF EDUCATION FROM PARTISAN TO NONPARTISAN, AND CHANGE THE TIME OF TAKING OFFICE FROM DECEMBER TO JULY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, the Jackson County Board of Education shall be elected on a nonpartisan basis at the time of the primary election in 1992 and biennially thereafter as terms of office provided by Chapter 314, Session Laws of 1961, expire. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan election and runoff election method shall be used with the results determined as provided in G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e). Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 2. Members elected in 1992 shall take office on the first Monday in December of 1992, but their terms shall expire July 1, 1996. Members elected in 1994 shall take office on the first Monday in December of 1994, but their terms shall expire July 1, 1998. Subsequent terms begin on the first day of July in the year of the election, and are for four years.

Sec. 3. This act does not affect the terms of office of current members of the Jackson County Board of Education, nor the manner of filling vacancies for terms of office which commenced in 1988 or 1990.

Sec. 4. To the extent this act conflicts with Chapter 314, Session Laws of 1961, this act prevails.

Sec. 5. The provisions of Chapter 314, Session Laws of 1961, concerning the boundaries of the districts and the fact that the voters of the entire county elect all the seats are not changed by this act.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 611 **CHAPTER 171**

AN ACT TO ALLOW THE NASH COUNTY ABC BOARD AND THE CITY OF EDEN ABC BOARD TO MAKE CREDIT CARD SALES IF AUTHORIZED BY THE ABC COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 22 of Chapter 800 of the 1989 Session Laws reads as rewritten:

"Sec. 22. This act is effective upon ratification except for Sections 8 and 16 which shall become effective October 1, 1989, and except for Section 17 which applies only to actions brought after the date of ratification. Section 21 shall expire on June 1, 1991. Section 21 shall not apply to ABC stores operated by the Nash County ABC Board or the City of Eden ABC Board.

Sec. 2. This act applies to Nash County and the City of Eden only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 686 **CHAPTER 172**

AN ACT TO MAKE TECHNICAL CHANGES TO CLARIFY THE CONFLICT OF INTEREST LAW RELATING TO BOARDS OF DIRECTORS OF HOSPITAL, MEDICAL, AND DENTAL SERVICE CORPORATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-65-173(b) reads as rewritten:

"(b) The authorization, adoption, approval, or favorable recommendation by the board of directors of a ~~public~~ corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation or bylaw provision or contract or resolution shall be void or voidable on such grounds. The authorization, adoption, approval, or favorable recommendation by the board of directors of a ~~nonpublic~~ corporation of any provision in any articles of incorporation, bylaw, contract or resolution, as permitted in this section, which occurred on or prior to the effective date of this act, shall not be deemed an act or corporate transaction in which a director has a conflict of interest, and no such articles of incorporation, bylaw provision, contract or resolution shall be void or voidable on such grounds. ~~Except as permitted in G.S. 55-8-31, no such bylaw, contract, or resolution not adopted, authorized, approved or ratified by shareholders shall be effective as to claims made or liabilities asserted against any director prior to its adoption, authorization, or approval by the board of directors.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 741 **CHAPTER 173**

AN ACT TO PROVIDE FOR THE REVOCATION OF UNRECORDED DURABLE POWERS OF ATTORNEY AND TO PROVIDE FOR PROOF OF EFFECTIVENESS OF A DURABLE POWER OF ATTORNEY BY AFFIDAVIT OF ATTORNEY-IN-FACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32A-8 reads as rewritten:

"§ *32A-8. Definition.*

A durable power of attorney is a power of attorney by which a principal designates another his attorney-in-fact in writing and the writing contains a statement that it is executed pursuant to the provisions of this Article or the words 'This power of attorney shall not be affected by my subsequent incapacity or mental incompetence,' or 'This power of attorney shall become effective after I become incapacitated or mentally incompetent,' or similar words showing the intent of the principal that the authority conferred shall be exercisable notwithstanding the principal's subsequent incapacity or mental incompetence. Unless the durable power of attorney provides otherwise, where the grant of power or authority conferred by a durable power of attorney is effective only upon the principal's subsequent incapacity or mental incompetence, any person to whom such writing is presented, in the absence of actual knowledge to the contrary, shall be entitled to rely on an affidavit, executed by the attorney-in-fact and setting forth that such condition exists, as conclusive proof of such incapacity or mental incompetence, subject to the provisions of G.S. 32A-13."

Sec. 2. G.S. 32A-13 reads as rewritten:

"§ *32A-13. Revocation.*

(a) Every power of attorney executed pursuant to the provisions of this Article and registered in an office of the register of deeds in this State as provided in G.S. 32A-9(b) shall be revoked by:

(1) The death of the principal; or

(2) Registration in the office of the register of deeds where the power of attorney has been registered of an instrument of revocation executed and acknowledged by the principal while he is not incapacitated or mentally incompetent, or by the registration in such office of an instrument of revocation executed by any person or corporation who is given such

power of revocation in the power of attorney, or by this Article, with proof of service thereof in either case on the attorney-in-fact in the manner prescribed for service of summons in civil actions.

(b) Every power of attorney executed pursuant to the provisions of this Article which has not been registered in an office of the register of deeds in this State shall be revoked by:

(1) The death of the principal;

(2) Any method provided in the power of attorney;

(3) Being burnt, torn, canceled, obliterated, or destroyed, with the intent and for the purpose of revoking it, by the principal himself or by another person in his presence and by his direction, while the principal is not incapacitated or mentally incompetent; or

(4) A subsequent written revocatory document executed and acknowledged in the manner provided herein for the execution of durable powers of attorney by the principal while not incapacitated or mentally incompetent and delivered to the attorney-in-fact in person or to his last known address by certified or registered mail, return receipt requested.

(c) As to acts undertaken in good faith reliance upon an affidavit executed by the attorney-in-fact stating that he did not have, at the time of exercise of the power, actual knowledge of the termination of the power by revocation pursuant to the provisions of G.S. 32A-13(b) or by the principal's death, such affidavit is conclusive proof of the nonrevocation or nontermination of the power at that time. This section does not affect any provision in a power of attorney for its termination by the expiration of time or occurrence of an event other than an express revocation."

Sec. 3. This act is effective upon ratification and applies to all durable powers of attorney in existence or created on or after that date.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 780 **CHAPTER 174**

AN ACT TO REWRITE THE LAW RESTRICTING THE EXERCISE OF POWER FOR A FIDUCIARY'S BENEFIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-34 reads as rewritten:

"*§ 32-34. Restriction on exercise of power for fiduciary's benefit.*

~~(a) Except as provided in subsection (b), a power conferred upon a person in his capacity as fiduciary to make discretionary distributions of principal or income to himself or to make discretionary allocations in his own favor of receipts or expenses as between income and principal cannot be exercised by him. If the power is conferred on two or more fiduciaries, it may be exercised by the fiduciaries who are not so disqualified. If there is no fiduciary qualified to exercise the power, it may be exercised by a special fiduciary appointed by the court. This section shall apply to all trusts now in existence and to all other trusts that shall come into existence after July 1, 1975.~~

~~(b) This section shall not apply to:~~

~~(1) Trusts now in existence in which the fiduciary is also the creator of the trust and is living; or~~

~~(2) Trusts that shall come into existence after July 1, 1975, in which the fiduciary is also the creator of the trust, is living, and the trust instrument shows a clear intent that this section shall not apply.~~

(a) For purposes of this section:

(1) 'General power of appointment' means any power that would cause income to be taxed to the fiduciary in his individual capacity under section 678 of the Internal Revenue Code and any power that would be a general power of appointment, in whole or in part, under section 2041(b)(1) or 2514(c) of the Internal Revenue Code.

(2) 'Internal Revenue Code' means the 'Code' as defined in G.S 105-2.1.

(3) The term 'fiduciary' has the meaning set forth in G.S 32-25.

(b) Unless application of this section is clearly negated by specific reference in the will, trust document, or other written instrument appointing a fiduciary, the following provisions apply to any fiduciary, whether acting as a sole fiduciary or as a co-fiduciary.

(1) Any power conferred upon a fiduciary in his capacity as a fiduciary, but not in his capacity as a beneficiary, which would, except for this section, constitute in whole or in part, a general power of appointment, may not be exercised by the fiduciary in favor of himself, his estate, his creditors, or the creditors of his estate, but may be exercised in any manner provided in subdivision (2) of this subsection.

(2) A power described in subdivision (1) of this subsection may be exercised as follows:

a. The fiduciary may exercise the power in favor of a person other than himself, his estate, his creditors, or the creditors of his estate.

b. If the power described in subdivision (1) of this subsection is conferred upon two or more fiduciaries, it may be exercised by the fiduciary or fiduciaries who are not disqualified from exercising the power as if they were the only fiduciary or fiduciaries.

c. If all of the serving fiduciaries are disqualified from exercising a power, the court that would have jurisdiction to appoint a fiduciary under the instrument, if there were no fiduciary currently serving, shall appoint a special fiduciary whose only power is to exercise the power that cannot be exercised by the other fiduciaries by reason of subdivision (1) of this subsection.

(3) Any power conferred upon the fiduciary in his capacity as a fiduciary to allocate receipts and expenses as between income and principal in his own favor must be exercised in accordance with the provisions of Article 2 of Chapter 37 of the General Statutes, the Principal and Income Act of 1973.

(c) Subsection (b) of this section does not apply to revocable trusts in which the fiduciary of the trust is also the creator of the trust and is still living.

(d) This section applies to all fiduciary relationships in existence on July 1, 1991, and to all other fiduciary relationships that come into existence after that date. The provisions of subsection (b) of this section are declaratory of existing law, and neither modify nor amend existing fiduciary relationships."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 58 **CHAPTER 175**

AN ACT TO DESIGNATE DECEMBER SEVENTH AS PEARL HARBOR REMEMBRANCE DAY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 103 of the General Statutes is amended by adding a new section to read:

"*§ 103-10. Pearl Harbor Remembrance Day.*

The seventh of December of each year is designated as Pearl Harbor Remembrance Day in North Carolina."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 117 **CHAPTER 176**

AN ACT TO INCREASE FINES IN G.S. 113-135 FOR VIOLATION OF RULES ADOPTED BY THE MARINE FISHERIES COMMISSION OR THE WILDLIFE RESOURCES COMMISSION, AS APPROPRIATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-135(a) reads as rewritten:

"*§ 113-135. General penalties for violating Subchapter or rules; increased penalty for prior convictions; interpretive provisions.*

(a) Any person who violates any provision of this Subchapter or any rule adopted by the Marine Fisheries Commission or the Wildlife Resources Commission, as appropriate, pursuant to the authority of this Subchapter, is guilty of a misdemeanor except that punishment for violation of the rules of the Wildlife Resources Commission is limited as set forth in G.S. 113-135.1. Unless a different level of punishment is elsewhere set out, anyone convicted of a misdemeanor under this section is punishable as follows:

(1) For a first conviction, a fine of not less than ~~ten dollars ($10.00)~~ twenty-five dollars ($25.00) nor more than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) or imprisonment not to exceed 30 days.

(2) For a second or subsequent conviction within ~~three years,~~ one year, a fine of not less than ~~fifty dollars (50.00)~~ one hundred dollars ($100.00) nor more than ~~two hundred dollars ($200.00)~~ five hundred dollars ($500.00), imprisonment not to exceed 90 days, or both."

Sec. 2. This act becomes effective August 1, 1991.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 225 **CHAPTER 177**

AN ACT TO AUTHORIZE DARE COUNTY TO INCREASE ITS OCCUPANCY TAX, LEVY A RESTAURANT TAX, AND CREATE A TOURISM BOARD TO PROMOTE TOURISM IN DARE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 449 of the 1985 Session Laws, as amended by Chapter 826 of the 1985 Session Laws, reads as rewritten:

"AN ACT TO AUTHORIZE DARE COUNTY TO LEVY AN OCCUPANCY ~~TAX.~~ TAX AND A PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax.

(a) Authorization and Scope. The Dare County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of the following in Dare County:

(1) Any room, lodging, or similar accommodation subject to sales tax under ~~G.S. 105-164.4(3);~~ G.S. 105-164.4(a)(3); and

(2) A campsite.

This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales tax.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of Dare County. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The Dare County Tax Collector shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

~~An operator of a business who collects the occupancy tax levied under this act may deduct from the amount remitted by him to the county a discount of three percent (3%) of the amount collected.~~

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county tax collector in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals and sales upon which the tax is levied. A return filed with the Dare County Tax Collector under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

~~(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid.~~

~~Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months.~~

(e) Use and Distribution of Tax Revenue. Dare County shall distribute two-thirds of the net proceeds of the tax, on a monthly basis, to the Towns of Kill Devil Hills, Kitty Hawk, Manteo, Nags Head, and Southern Shores in proportion to the amount of ad valorem taxes levied by each town for the preceding fiscal year. The county shall retain the remaining one-third of the net proceeds. Revenue distributed to a town or retained by the county under this subsection may be used only for tourist-related purposes, including construction and maintenance of public facilities and buildings, garbage, refuse, and solid waste collection and disposal, police protection, and emergency services.

~~As used in this subsection, 'net proceeds' means gross proceeds less the cost to the county of administering and collecting the tax.~~

(f) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Dare County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply in this act. In addition, the following definitions apply in this act.

(1) Net proceeds. Gross proceeds less the cost to the county of administering and collecting the tax.

(2) Prepared food and beverages. Meals, food, and beverages which a retailer has added value to or whose state has been altered (other than solely by cooling) by preparing,

combining, dividing, heating, or serving, in order to make them available for immediate consumption.

Sec. 3. Additional Occupancy Tax. In addition to the tax authorized by Section 1 of this act, the Dare County Board of Commissioners may levy a room occupancy and tourism development tax of one percent (1%) of the gross receipts derived from the rental of accommodations taxable under that section. The county may not levy a tax under this section unless it also levies the tax under Section 1 of this act. The county may levy a tax under this section only if it also levies a tax under Section 4 of this act to become effective on the same date. A tax levied under this section may not become effective before the later of (i) the first day of the second month after the resolution levying the tax is adopted or (ii) January 1, 1992. The levy, collection, administration, and repeal of the tax authorized by this section shall be in accordance with Section 1 of this act, except that the county may repeal a tax levied under this section only if it also repeals the tax levied under Section 4 of this act effective on the same date. The county shall distribute the net proceeds of the tax as provided in Section 7 of this act.

Sec. 4. Prepared Food and Beverage Tax.

(a) Authorization. The Dare County Board of Commissioners may, by resolution, after not less than 10 days' public notice and a public hearing held pursuant thereto, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold within the county at retail for consumption on or off the premises by a retailer subject to sales tax under G.S. 105-164.4(a)(1). The county may levy a tax under this section only if it also levies a tax under Section 3 of this act to become effective on the same date. This tax is in addition to State and local sales tax.

(b) Exemptions. The prepared food and beverage tax does not apply to the following sales of prepared food and beverages:

(1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of a sleeping room or lodging.

(2) Retail sales exempt from taxation under G.S. 105-164.13.

(3) Retail sales through or by means of vending machines.

(4) Prepared food and beverages served by a business subject to the occupancy tax levied pursuant to this act if the charge for the meals or prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the business.

(5) Prepared food and beverages furnished without charge by an employer to an employee.

(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar departments of the grocer or grocery section.

(c) Collection. Every retailer subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing prepared food and beverages. The tax shall be added and charged separately from the sales records, and shall be paid by the purchaser to the retailer as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the retailer. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

For the convenience of retailers the county shall determine the amount to be added to the sales price of sales subject to the prepared food and beverage tax. The amounts shall be set forth in a bracket system and distributed to each retailer responsible for collecting the prepared food and beverage tax. The use of the bracket system does not relieve the retailer from the duty of collecting and remitting an amount equal to the prepared food and beverage tax.

(d) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from sales upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(e) Refunds. The county shall refund to a nonprofit or governmental entity the prepared food and beverage tax paid by the entity on eligible purchases of prepared food and beverages. A nonprofit or governmental entity's purchase of prepared food and beverages is eligible for a refund under this subsection if the entity is entitled to a refund under G.S. 105-164.14 of the sales and use tax paid on the purchase. The time limitations, application requirements, penalties, and restrictions provided in G.S. 105-164.14(b) and (d) shall apply to refunds to nonprofit entities; the time, limitations, application requirements, penalties, and restrictions provided in G.S.

105-164.14(c) and (d) shall apply to refunds to governmental entities. When an entity applies for a refund of the prepared food and beverages tax paid by it on purchases, it shall attach to its application a copy of the application submitted to the Department of Revenue under G.S. 105-164.14 for a refund of the sales and use tax on the same purchases. An applicant for a refund under this subsection shall provide any information required by the county to substantiate the claim.

(f) Use of Proceeds. The county shall distribute the net proceeds of the tax as provided in Section 7 of this act.

(g) Effective Date of Levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be before the later of (i) the first day of the second month after the date the resolution is adopted or (ii) January 1, 1992.

(h) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Dare County Board of Commissioners. The county may repeal the tax, however, only if it also repeals the tax levied under Section 3 of this act, effective on the same date. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 5. Penalties. A person, firm, corporation, or association who fails or refuses to file a return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.

A person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed six months.

Sec. 6. Dare County Tourism Board.

(a) Appointment and Membership. When the Dare County Board of Commissioners adopts a resolution levying a tax under Section 3 and Section 4 of this act, it shall also adopt a resolution creating a tourism board to be known as the Dare County Tourism Board, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The tourism board shall consist of 13 members appointed by the board of commissioners as provided below. Members of the tourism board must be residents of Dare County. Members shall serve two-year terms except as provided below. No member may serve more than two successive two-year terms.

(1) One member shall be a member of the board of directors of the Outer Banks Chamber of Commerce selected from nominees submitted by the board of directors of the Chamber of Commerce. This member shall serve an initial term of one year.

(2) One member shall be a member of the board of directors of the Dare County Restaurant Association selected from nominees submitted by the board of directors of the Dare County Restaurant Association. This member shall serve an initial term of two years.

(3) One member shall be a member of the board of directors of the Dare County Hotel/Motel Association selected from nominees submitted by the board of directors of the Dare County Hotel/Motel Association. This member shall serve an initial term of one year.

(4) One member shall be a member of the board of directors of the Dare County Board of Realtors selected from nominees submitted by the board of directors of the Dare County Board of Realtors. This member shall serve an initial term of two years.

(5) Five members shall be one member from each of the town boards of Southern Shores, Kitty Hawk, Kill Devil Hills, Nags Head, and Manteo, who shall serve initial terms respectively of one year, two years, one year, two years, and one year, and who shall be selected from nominees submitted by each of the respective town boards.

(6) One member shall be a Dare County Commissioner. This member shall serve an initial term of two years.

(7) Three members 'at large' shall be from anywhere within Dare County. One of these members must be a resident of Hatteras Island. Two of these members shall serve initial terms of one year, and one shall serve an initial term of two years.

The board of commissioners may remove a member of the tourism board only for good cause. Members shall serve the full term for which appointed regardless whether the member is no longer a member of the appropriate board designated above. The Dare County Board of Commissioners shall determine the compensation to be paid to members of the tourism board.

(b) Duties. The tourism board shall elect a Chair and other officers from among its members to serve one-year terms. The tourism board shall meet at least quarterly at the call of the Chair and shall adopt rules of procedure to govern its meetings.

The tourism board shall promote year-round travel and tourism in Dare County as provided in Section 7 of this act and perform other duties required by law.

Sec. 7. Use of Proceeds of Additional Occupancy Tax and Prepared Food and Beverage Tax. Dare County shall remit the net proceeds of the taxes levied under Sections 3 and 4 of this act on a monthly basis to the Dare County Tourism Board. The tourism board may deduct the cost of its annual audit from the proceeds remitted to it. The tourism board shall use the remainder of the proceeds as follows:

(1) Seventy-five percent (75%) shall be used for the cost of administration and to promote tourism. The tourism board's expenditures may include (i) advertising to promote less-than-peak-season events and programs, (ii) marketing research, (iii) a mail and telephone inquiry response program, and (iv) welcoming and hospitality functions.

(2) Twenty-five percent (25%) shall be used for services or programs needed due to the impact of tourism on the county.

The tourism board may expend funds only for public purposes. The tourism board shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require. The tourism board may not use the proceeds distributed to it to purchase real property or for the purposes set out in subdivision (2) above without prior approval by the Dare County Board of Commissioners.

~~Sec. 2.~~ Sec. 8. This act is effective upon ratification."

Sec. 2. Effective on the date the Dare County Board of Commissioners creates the Dare County Tourism Board as provided in this act, Chapter 201 of the 1965 Session Laws, as amended, is further amended by deleting the phrase "Dare County Tourist Bureau" and substituting the phrase "Dare County Tourism Board".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 478 **CHAPTER 178**

AN ACT TO CLARIFY THE TYPE OF DEVICE COVERED BY THE AMUSEMENT DEVICE SAFETY ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-111.2(b) reads as rewritten:

"(b) This Article shall not apply to any ~~single passenger coin-operated device, manually, mechanically, or electrically operated which customarily is placed, singly or in groups, in a public location and~~ device which does not normally require the supervision or services of an operator. Unless they are located in an amusement park or carnival area, the following devices or attractions are exempt from this Article:

(1) Hot or cold air inflatable devices;
(2) Bumper boats; and
(3) Simulator devices that simulate the movement shown on various video tapes."

Sec. 2. G.S. 95-111.3 reads as rewritten:

"*§ 95-111.3. Definitions.*

(a) The term 'amusement device' shall mean any mechanical or structural device or attraction that carries or conveys or permits persons to walk along, around or over a fixed or restricted route or course or within a defined area including the entrances and exits thereto, for the purpose of giving such persons amusement, pleasure, thrills or excitement. The term shall include but not be limited to roller coasters, Ferris wheels, merry-go-rounds, glasshouses, waterslides, and walk-through dark houses. This term shall not include the following:

(1) Devices operated on a river, lake, or any other natural body of water;
(2) Wavepools;
(3) Roller skating rinks;
(4) Ice skating rinks;
(5) Skateboard ramps or courses;
(6) Mechanical bulls;
(7) Buildings or concourses used in laser games;
(8) All terrain vehicles;
(9) Motorcycles;
(10) Bicycles; and
(11) Mopeds.

(b) The term 'amusement park' shall mean any tract or area used principally as a permanent location for amusement devices.

(b1) The term 'carnival area' shall mean any area, tract, or structure that is rented, leased, or owned as a temporary location for amusement devices.

(c) The term 'Commissioner' shall mean the North Carolina Commissioner of Labor or his authorized representative.

(d) The term 'Director' shall mean the Director of the Elevator and Amusement Device Division of the North Carolina Department of Labor.

(e) The term 'operator' shall mean any person having direct control of the operation of an amusement device. The term 'operator' shall not include any person on the device for the purpose of receiving amusement, pleasure, thrills, or excitement.

(f) The term 'owner' shall mean any person or authorized agent of such person who owns an amusement device or in the event such device is leased, the lessee. The term 'owner' also shall include the State of North Carolina or any political subdivision thereof or any unit of local government.

(g) The term 'person' shall mean any individual, association, partnership, firm, corporation, private organization, or the State of North Carolina or any political subdivision thereof or any unit of local government.

(h) The term 'waterslide' shall mean a stationary amusement device that provides a descending ride on a flowing water film through a trough or tube or on an inclined plane into a pool of water. This term does not include devices where the vertical distance between the highest and the lowest points does not exceed 15 feet."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 582 **CHAPTER 179**

AN ACT TO CLARIFY THAT SPIN-OFFS OF PROFESSIONAL CORPORATIONS ARE ALLOWED ONLY IF CARRIED OUT IN ACCORDANCE WITH FEDERAL LAW AS IT MAY BE AMENDED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-6(b) reads as rewritten:

"(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing

corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of ~~1986.~~ 1986, as amended. The distributing corporation shall distribute the stock of the controlled corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than 30 days after it was issued to the distributing corporation is void."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

H.B. 1146 **CHAPTER 180**

AN ACT TO INCREASE THE EXAMINATION FEE FOR LANDSCAPE CONTRACTOR LICENSE APPLICANTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 89D-5(b) reads as rewritten:

"(b) Any person who applies to the Board to be registered and titled as a landscape contractor shall be required to take an oral or written examination to determine his qualifications. Each application for registration by examination shall be accompanied by an application fee of fifty dollars ($50.00).

The Board shall compile a manual from which the examination will be prepared. The examination fee shall not exceed ~~twenty-five dollars ($25.00).~~ seventy-five dollars ($75.00). Any one failing to pass an examination may be reexamined upon payment of the same fee as that charged to persons taking the examination for the first time, in accordance with such rules as the Board may adopt pertaining to examinations and reexaminations.

If the results of the examination are satisfactory, the Board shall issue the applicant a certificate authorizing him to be titled as a landscape contractor in the State of North Carolina upon payment of the initial certification fee as outlined in subsection (c)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 30th day of May, 1991.

S.B. 84 **CHAPTER 181**

AN ACT TO REQUIRE THAT THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES PREPARE A WATER RESOURCES DEVELOPMENT PROJECTS

PLAN AND TO REQUIRE THE DIRECTOR OF THE BUDGET TO REVIEW THE PLAN IN MAKING RECOMMENDATIONS TO THE GENERAL ASSEMBLY FOR FUNDING OF WATER RESOURCES DEVELOPMENT PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new Part to read:

"Part 8A. Water Resources Development Projects.

"*§ 143-215.73A. Water Resources Development Plan.*

(a) Plan prepared. - Before 1 July in each calendar year, the Department of Environment, Health, and Natural Resources shall prepare a statewide plan for water resources development projects for a period of six years into the future. The plan shall be known as the Water Resources Development Plan. If the plan differs from the Water Resources Development Plan adopted for the preceding calendar year, the Department shall indicate the changes and the reasons for such changes. The Department shall submit the plan to the Director of the Budget for review.

(b) Projects listed. - The plan shall list the following water resources development projects based on their status as of 1 May of the year in which the plan is prepared:

(1) Projects approved by the Congress of the United States.

(2) Projects for which the Congress of the United States has appropriated funds.

(3) Projects for which grant applications have been submitted under Part 8 of Article 21 of Chapter 143 of the General Statutes.

(4) Projects for which grant applications have been submitted under Article 4 of Chapter 139 of the General Statutes.

(5) Projects planned as federal reservoir projects but for which no federal funds are scheduled and for which local governments are seeking State financial assistance.

(c) Project priorities and funding recommendations. - The Department shall assign a priority to each project within each of the five categories listed under subsection (b) of this section either by giving the project a number, with '1' assigned to the highest priority, or by recommending no funding. The Department shall state its reasons for recommending the funding, deferral, or elimination of a project. The Department shall determine the priority of a project based on the following criteria: local interest in the project, the cost of the project to the State, the benefit of the project to the State, and the environmental impact of the project.

(d) Project information. - For each project listed under subsection (b) of this section, the Water Resources Development Plan shall:

(1) Provide a brief description.

(2) If federal, list the estimated cost of each of the following phases that have not been completed as of 1 July, (i) feasibility study, (ii) construction, (iii) operation and maintenance, and the amount of State funds required to match the federal funds needed.

(3) If State or local, list the estimated cost to complete the project and amount of State funds required under G.S. 143-215.71 or G.S. 139-54.

(4) Indicate the total cost to date and the State share of that cost.

(5) Indicate the status.

(6) Indicate the estimated completion date.

(e) Distribution of the plan. - The Director of the Budget shall provide copies of the plan to the members of the Advisory Budget Commission when the Advisory Budget Commission meets to deliberate on the biennial budget or on the revised budget for the second year of the biennium. The Director of the Budget shall also provide copies of the plan to the General Assembly along with the recommended biennial budget and the recommended revised budget for the second year of the biennium.

(f) Budget recommendations. - The Director of the Budget shall determine which projects, if any, will be included in the recommended biennial budget and in the recommended revised budget for the second year of the biennium. The budget document transmitted to the General Assembly shall identify the projects or types of projects recommended for funding."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 112 **CHAPTER 182**

AN ACT TO MAKE ANNUAL SPECIAL FUEL REPORTS DUE THE SAME TIME AS ANNUAL MOTOR CARRIER REPORTS AND TO MAKE CONFORMING CHANGES TO THE MOTOR CARRIER LAWS TO FACILITATE ANNUAL MOTOR CARRIER REPORTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.10 reads as rewritten:

"§ *105-449.10.* ~~*Records and reports required of user-seller or user.*~~ *Reports and payment of tax by user.*

(a) Report.-- Each ~~user-seller or~~ user required to be licensed under this Article shall keep records and make reports to the Secretary in accordance with regulations adopted by the Secretary. The records and reports shall show all purchases, sales, deliveries, and use of fuel by the ~~user-seller or~~ licensed user. A licensed user ~~that is not authorized by this subsection to file an annual report shall file a quarterly report on or before the last day of the month immediately following the end of the quarter. A licensed user that uses fuel only in a motor vehicle operated in this State or that has been granted permission to file an annual report under G.S. 105-449.45 shall file an annual report for a calendar year by January 1 following the end of the year. A user-seller shall file a report as required by G.S. 105-449.21.~~ shall file a report on a quarterly basis unless the Secretary has given the licensed user permission to file a report on an annual basis. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.

The Secretary may authorize a licensed user to file an annual report if either of the following applies:

(1) The licensed user is not a motor carrier under Article 36B of this Chapter.

(2) The licensed user is a motor carrier under Article 36B of this Chapter but is not required to file a quarterly report under G.S. 105-449.45.

An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a licensed user must apply to the Secretary for permission to file on an annual basis. An application must be submitted by the date set by the Secretary. Once granted permission, a licensed user may continue to file an annual report until notified by the Secretary to file a quarterly report.

(b) Payment.-- A user who acquires nontaxpaid fuel is liable for ~~shall pay~~ the tax levied by this Article on ~~any nontaxpaid fuel acquired by him.~~ the fuel. A licensed user shall pay the tax due on nontaxpaid fuel acquired during a reporting period when filing a report for that period. An unlicensed user who acquires nontaxpaid fuel shall report the fuel and pay the tax due on the fuel in the same manner as a licensed user."

Sec. 2. G.S. 105-449.37(b) reads as rewritten:

"(b) Liability.-- A motor carrier who operates on one or more days of a ~~quarter~~ reporting period is liable for the tax imposed by this Article for that ~~quarter~~ reporting period and is entitled to the credits allowed for that ~~quarter.~~ reporting period."

Sec. 3. G.S. 105-449.39 reads as rewritten:

"§ *105-449.39. Credit for payment of motor fuel tax.*

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the ~~State.~~ State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain ~~this~~ a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a ~~quarter~~ reporting period exceeds the motor carrier's liability for that ~~quarter,~~ reporting period, the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another ~~quarter.~~ reporting period. The Secretary may not allow a refund without auditing the motor carrier's records unless the motor carrier:

(1) Has furnished a bond under G.S. 105-449.40; or

(2) Has complied with this Subchapter and the rules adopted under the Subchapter for at least a one-year period preceding the date the application for a refund is filed."

Sec. 4. G.S. 105-449.42 reads as rewritten:

"§ *105-449.42. Payment of tax.*

~~For the purposes of making payment of taxes pursuant to this Article and making reports pursuant to this Article, the year is divided into four quarters of three consecutive months each, and the first quarter shall consist of the months of January, February and March. The tax herein imposed shall be paid by each motor carrier to the Secretary on or before the last day of the month immediately following the quarter with respect to which tax liability hereunder accrues and~~ The tax levied by this Article is due when a motor carrier files a quarterly or an annual report under G.S. 105-449.45. The amount of tax due shall be calculated upon the amount of gasoline or other motor fuel used by the motor carrier in its operations within this State ~~by each such carrier~~ during the ~~quarter ending with the last day of the preceding month.~~ reporting period covered by the report."

Sec. 5. G.S. 105-449.45(b) reads as rewritten:

"(b) Annual Report. -- The Secretary may authorize a motor carrier whose estimated annual tax liability under this Article does not exceed two hundred dollars ($200.00) to file an annual report of its operations. The tax liability of a motor carrier that files an annual report shall be computed at a rate equal to the flat cents-per-gallon

rate plus the average of the two cents-per-gallon rates in effect during the year for which the liability is computed.

An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must apply to the Secretary for permission to file on an annual basis. An application must be submitted by the date set by the Secretary. Once granted permission, a motor carrier may continue to file an annual report until notified by the Secretary to file a quarterly report."

Sec. 6. G.S 105-449.49 reads as rewritten:

"§ *105-449.49. Temporary permits.*

Upon application to the Secretary and payment of a fee of twenty-five dollars ($25.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than 20 days. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the 20-day ~~period, as otherwise required by G.S. 105-449.45.~~ period. A motor carrier who files a report for a ~~quarter~~ reporting period in which the carrier paid a temporary permit fee may claim a credit for the amount of the fee. A motor carrier whose operations are exclusively intrastate may obtain a refund of the fee by filing a report for the ~~quarter~~ reporting period in which the fee was paid."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 218 **CHAPTER 183**

AN ACT AUTHORIZING THE DIVISION OF MOTOR VEHICLES TO CANCEL THE REGISTRATION AND TITLE OF CERTAIN VEHICLES AND DELETING AN OBSOLETE REQUIREMENT CONCERNING INFORMATION GIVEN IN AN APPLICATION FOR A CERTIFICATE OF TITLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-110 is amended by adding a new subsection to read:

"(l) The Division may rescind and cancel the registration and certificate of title of a vehicle when presented with evidence, such as a sworn statement, that the vehicle has been transferred to a person who has failed to get a new certificate of title for the vehicle as required by G.S. 20-73. A person may submit evidence to the Division by mail."

Sec. 2. G.S. 20-52(a)(3) reads as rewritten:

"(3) A statement of the applicant's title and of all liens ~~or encumbrances~~ upon ~~said vehicle and~~ the vehicle, including the names and addresses of all lienholders in the order of their priority, and the ~~amount,~~ date and nature of ~~the security agreement;~~ each lien;".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 280 **CHAPTER 184**

AN ACT TO CREATE THE NORTH CAROLINA CENTER FOR APPLIED TEXTILE TECHNOLOGY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-68 reads as rewritten:

"*§ 115D-68. Creation of board of trustees; members and terms of office; no compensation.*

The ~~affairs of the North Carolina Vocational Textile School~~ North Carolina Center for Applied Textile Technology shall be ~~managed~~ managed, subject to policies and regulations of the State Board of Community Colleges, by a board of ~~trustees composed of nine members, who shall be appointed by the Governor, and the State Director of Vocational Education as ex officio member thereof.~~ trustees. The board of trustees shall consist of the President of the North Carolina System of Community Colleges and nine members appointed by the Governor. The terms of office of the trustees appointed by the Governor shall be as follows: ~~Two of said trustees shall be appointed for a term of two years; two for three years; and two for four years.~~ Three of the trustees shall be appointed for a term of two years; three for three years; and three for four years. At the expiration of ~~such~~ those terms, the appointments shall be made for periods of four years. In the event of any vacancy on ~~said boards,~~ the board, the vacancy shall be filled by appointment ~~by~~ of the Governor for the unexpired term of the member causing ~~such~~ the vacancy. The members of the ~~said~~ board of trustees appointed by the Governor shall serve without compensation. ~~The reenactment of this section shall not have the effect of vacating the appointment or changing the terms of any of the members of said board of trustees heretofore appointed.~~"

Sec. 2. G.S. 115D-69 reads as rewritten:

"*§ 115D-69. Powers of board.*

The ~~said~~ board of trustees shall hold all the property of the ~~North Carolina Vocational Textile School~~ North Carolina Center for Applied Textile Technology and shall have the authority to direct and manage the affairs of ~~said school, and~~ the Center in accordance with the

policies and regulations of the State Board of Community Colleges and, within available appropriations therefor, appoint a managing head and ~~such~~ any other officers, teachers and employees as shall be necessary for the proper conduct thereof. The board of trustees, on behalf of ~~said school, shall have the right to~~ the Center, may accept and administer any and all gifts and donations from the United States government or from any other source which may be useful in carrying on the affairs of ~~said school.~~ the Center. Provided, however, that the ~~said~~ board of trustees ~~is not authorized to~~ shall not accept any ~~such~~ funds upon any condition that ~~said school~~ the Center shall be operated contrary to any provision of the Constitution or statutes of this State."

Sec. 3. G.S. 115D-71 reads as rewritten:

"*§ 115D-71. Persons eligible to attend ~~institution;~~ the Center; subjects taught.*

Persons eligible for ~~attendance upon this institution~~ to attend the Center shall be at least 16 years of age and legal residents of the State of North Carolina, as set forth in G.S. ~~116-143.1 and 116-143.2;~~ 116-143.1: Provided, that out-of-state students, not to exceed ten percent (10%) of the total enrollment, may be enrolled when vacancies exist, upon payment of ~~tuition, the~~ tuition. The amount of tuition ~~to~~ shall be determined by the board of trustees. The money thus collected ~~is to be deposited in the treasury of the North Carolina Vocational Textile School, to be used as needed in the operation of the school.~~ shall be deposited in the State treasury. The ~~institution shall teach the general principles and practices of the textile manufacturing and related subjects.~~ Center shall (i) assist individual citizens of North Carolina in becoming contributing members of a well-qualified work force and (ii) assist in identification of problems confronting the textile industry and in solving these problems through education, training, and technology transfer in partnership with the North Carolina Community College System."

Sec. 4. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 326 **CHAPTER 185**

AN ACT TO ESTABLISH THE AUTHORITY OF THE DEPARTMENT OF HUMAN RESOURCES TO MAINTAIN A REGISTRY OF NURSE AIDES AND TO INCLUDE FINDINGS OF ABUSE, NEGLECT, AND MISAPPROPRIATION IN THE NURSE AIDE REGISTRY.

The General Assembly of North Carolina enacts:

Section 1. Chapter 131E of the General Statutes is amended by adding a new section to read:

"*§ 131E-111. Nurse Aide Registry.*

(a) Pursuant to 42 U.S.C. § 1395i-3(e) and 42 U.S.C. § 1396r(e), the Department shall establish and maintain a registry containing the names of all nurse aides working in nursing facilities in North Carolina. The Department shall include in the nurse aide registry any findings by the Department of neglect of a resident in a nursing facility or abuse of a resident in a nursing facility or misappropriation of the property of a resident in a nursing facility by a nurse aide.

(b) A nurse aide who wishes to contest a finding of resident neglect, resident abuse, or misappropriation of resident property made against the aide, is entitled to an administrative hearing as provided by the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for contested case shall be filed within 30 days after the nurse aide receives written notice by certified mail of the Department's intent to place findings against the aide in the nurse aide registry.

(c) 'Nursing facility', as used in this section, means a 'combination home' as defined in G.S. 131E-101(1) and a 'nursing home' as defined in G.S. 131E-101(6) and also means 'facility' as that term is defined in G.S. 131E-116(2).

(d) The Commission shall adopt, amend, and repeal all rules necessary for the implementation of this section."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 344 **CHAPTER 186**

AN ACT TO TRANSFER THE NORTH CAROLINA CLEAN WATER REVOLVING LOAN AND GRANT PROGRAM TO THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159G-3 reads as rewritten:

"*§ 159G-3. Definitions.*

As used in this Chapter, the following words shall have the meanings indicated, unless the context clearly requires otherwise:

~~(1) 'Administrative Account' means the Administrative Account in the Clean Water Revolving Loan and Grant Fund established in the Office of State Budget and~~

~~Management under the provisions of this Chapter to cover administrative costs of the program.~~

(2) 'Applicant' means a local government unit that applies for a revolving loan or grant under the provisions of this Chapter. In addition, a local government may provide funds to a nonprofit agency which is currently under contract and authorized to provide wastewater treatment or water supply services to that unit of local government.

(3) 'Clean Water Revolving Loan and Grant Fund' means the fund established in the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources to carry out the provisions of this Chapter, with various accounts therein as herein provided.

(4) 'Construction costs' means the actual costs of planning, designing and constructing any project for which a revolving loan or grant is made under this Chapter including planning; environmental assessment; wastewater system analysis, evaluation and rehabilitation; engineering; legal, fiscal, administrative and contingency costs for water supply systems, wastewater collection systems, wastewater treatment works and any extensions, improvements, remodeling, additions, or alterations to existing systems. Construction costs may include excess or reserve capacity costs, attributable to no more than 20-year projected domestic growth, plus ten percent (10%) unspecified industrial growth. In addition, construction costs shall include any fees payable to the Environmental Management Commission or the Division of Environmental Health for review of applications and grant of permits, and fees for inspections under G.S. 159G-14. Construction costs may also include the costs for purchase or acquisition of real property.

(5) 'Grant' means a sum of money given by the State to a local government unit to subsidize the construction costs of a project authorized by this Chapter, without any obligation on the part of such unit to repay such sum.

(6) 'Commission for Health Services' means the Commission for Health Services created by G.S. 130A-29.

(6a) 'Debt instrument' means an instrument in the nature of a promissory note executed by a local government unit under the provisions of this Chapter, to evidence a debt to the State and obligation to repay the principal, plus interest, under stated terms.

(7) 'Division of Environmental Health' means the Division of Environmental Health of the Department of Environment, Health, and Natural Resources.

(8) 'Environmental Management Commission' means the Environmental Management Commission of the Department of Environment, Health, and Natural Resources.

(9) 'Local Government Commission' means the Local Government Commission of the Department of the State Treasurer, established by Article 2 of Chapter 159 of the General Statutes.

(10) 'Local government unit' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority or joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes.

~~(11) 'Office of State Budget and Management' means the Office of State Budget and Management established by law.~~

(12) 'Receiving agency' means the Division of Environmental Health with respect to receipt of applications for revolving loans and grants for water supply systems, and the Environmental Management Commission and the Division of Environmental Management with respect to receipt of applications for revolving loans and grants for wastewater systems.

(13) 'Revolving construction loan' means a sum of money loaned by the State to a local government unit to subsidize the construction costs of a project authorized by this Chapter, with an obligation on the part of such unit to repay such sum, the proceeds of such repayment to be deposited in the Water Pollution Control Revolving Fund.

(14) 'Revolving emergency loan' means a sum of money loaned by the State to a local government unit upon a certification, as provided in this Chapter, of a serious public health hazard, with an obligation on the part of such unit to repay such sum.

(15) 'Revolving loan' includes a revolving construction loan and an emergency loan.

(15a) 'State' means the State of North Carolina.

(15b) 'State Treasurer' means the Treasurer of the State elected pursuant to Article III, Section 7 of the Constitution or his designated representative.

(16) 'Wastewater Accounts' means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources under this Chapter for revolving loans and grants for wastewater treatment work and wastewater collection system projects.

(17) 'Wastewater collection system' means a unified system of pipes, conduits, pumping stations, force mains, and appurtenances other than interceptor sewers, for collecting and transmitting water-carried human wastes and other wastewater from residences, industrial establishments or any other buildings, and owned by a local government unit.

(18) 'Wastewater treatment works' means the various facilities and devices used in the treatment of sewage, industrial waste or other wastes of a liquid nature, including the necessary interceptor sewers, outfall sewers, phosphorous removal equipment, pumping, power and other equipment and their appurtenances.

(19) 'Water Supply Accounts' means the various accounts in the Clean Water Revolving Loan and Grant Fund established in the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources under this Chapter for revolving loans and grants for water supply system projects.

(20) 'Water supply system' means a public water supply system consisting of facilities and works for supplying, treating and distributing potable water including, but not limited to, impoundments, reservoirs, wells, intakes, water filtration plants and other treatment facilities, tanks and other storage facilities, transmission mains, distribution piping, pipes connecting the system to other public water supply systems, pumping equipment and all other necessary appurtenances, equipment and structures."

Sec. 2. G.S. 159G-4 reads as rewritten:

"*§ 159G-4. Appropriations.*

(a) Of the funds appropriated to the Clean Water Revolving Loan and Grant Fund, the amount required in each fiscal year to provide the State match of any federal funds deposited into the Water Pollution Control Revolving Fund shall be allocated to that fund.

(b) Of the appropriations made from the General Fund to the Clean Water Revolving Loan and Grant Fund for use of the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources as provided in this Chapter, allocations are made as

follows after first subtracting the amounts allocated under subsection (a) of this section, to the extent that there are any excess funds available:

Wastewater Accounts	
General Wastewater Revolving Loan Account	45.00%
Emergency Wastewater Revolving Loan Account	14.00%
High-Unit Cost Wastewater Account	10.00%
Water Supply Accounts	
General Water Supply Revolving Loan Account	23.00%
High-Unit Cost Water Supply Account	3.00%
Emergency Water Supply Revolving Loan Account	5.00%

(c) All payments of interest and repayments of principal resulting from revolving loans shall be credited to the respective accounts from which the revolving loan funds were disbursed. Terms and conditions for repayment of revolving loans shall be established by the ~~Office of State Budget and Management,~~ Department of Environment, Health, and Natural Resources, with the assistance of the Local Government Commission, consistent with the requirements of the Federal Water Pollution Control Act and this Chapter. Provided, the interest rate for all revolving loans authorized by this Chapter shall be fixed at the same percent per annum as the interest rate fixed under the Federal Water Pollution Control Act for loans from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c), not to exceed the lesser of four percent (4%) or one-half the prevailing national market rate for tax exempt general obligation debt of similar maturities derived from a published indicator. Provided further, the interest rate may be fixed at a lower rate per annum if authorized by the Federal Water Pollution Control Act Regulations. It is the intent of the General Assembly to provide uniform interest payments for all loans made to units of local government irrespective of the account from which loans are made for either wastewater or water supply projects."

Sec. 3. G.S. 159G-5(a) reads as rewritten:

"*§ 159G-5. Clean Water Revolving Loan and Grant Fund.*

(a) There is established in the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources a fund to be known as the Clean Water Revolving Loan and Grant ~~Fund,~~ Fund. The Fund is to be administered by the ~~Office of State Budget and Management,~~ Department of Environment, Health,

and Natural Resources which shall be responsible for receipt and disbursement of all moneys as appropriated and provided for in this Chapter."

Sec. 4. G.S. 159G-6 reads as rewritten:

"§ *159G-6. Distribution of funds.*

(a) Revolving loans and grants.

(1) All funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund, other than funds set aside for administrative expenses, shall be used for revolving loans and grants to local government units for construction costs of wastewater treatment works, wastewater collection systems and water supply systems and other assistance as provided in this Chapter.

(2) The maximum principal amount of a revolving loan or a grant may be one hundred percent (100%) of the nonfederal share of the construction costs of any eligible project. The maximum principal amount of revolving loans made to any one local government unit during any fiscal year shall be three million dollars ($3,000,000). The maximum principal amount of grants made to any one local government unit during any fiscal year shall be five hundred thousand dollars ($500,000).

(3) The State Treasurer shall be responsible for investing and distributing all funds appropriated or accruing to the Clean Water Revolving Loan and Grant Fund for revolving loans and grants under this Chapter. In fulfilling his responsibilities under this section, the State Treasurer shall make a written request to the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources to arrange for the appropriated funds to be (i) transferred from the appropriate accounts to a local government unit to provide funds for one or more revolving loans or grants or (ii) invested as authorized by this Chapter with the interest on and the principal of such investments to be transferred to the local government unit to provide funds for one or more revolving loans or grants.

(b) Wastewater Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Wastewater Accounts in each fiscal year shall be used to make revolving loans and grants to local government units as provided below. The ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources shall disburse no funds from the Wastewater Accounts except upon receipt of written approval of the disbursement from the Environmental Management Commission.

(1) General Wastewater Revolving Loan and Grant Account. -- The funds in the General Wastewater Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans or grants in connection with approved wastewater treatment work or wastewater collection system projects.

(2) High-Unit Cost Wastewater Account. -- The funds in the High-Unit Cost Wastewater Account shall be available for grants to applicants for high-unit cost wastewater projects. Eligibility of an applicant for such a grant shall be determined by comparing estimated average household user fees for water and sewer service, for debt service and operation and maintenance costs, to one and one-half percent (1.5%) of the median household income in the county in which the project is located. The projects which would require estimated average household water and sewer user fees greater than one and one-half percent (1.5%) of the median household income are defined as high-unit cost wastewater projects and will be eligible for a grant equal to the excess cost, subject to the limitations in subsection (a)(2) of this section.

(3) Emergency Wastewater Revolving Loan Account. -- The funds in the Emergency Wastewater Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Environmental Management Commission certifies that a serious public health hazard, related to the inadequacy of existing wastewater facilities, is present or imminent in a community.

(c) Water Supply Accounts. -- The sums allocated in G.S. 159G-4 and accruing to the various Water Supply Accounts in each fiscal year shall be used to provide revolving loans and grants to local government units as provided below. The ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources shall disburse no funds from the Water Supply Accounts except upon receipt of written approval of the disbursement from the Division of Environmental Health.

(1) General Water Supply Revolving Loan and Grant Account. -- The funds in the General Water Supply Revolving Loan and Grant Account shall be used exclusively for the purpose of providing for revolving construction loans and grants in connection with water supply systems generally and not upon a county allotment basis.

(2) High-Unit Cost Water Supply Account. -- The funds in the High-Unit Cost Water Supply Account shall be available for

grants to applicants for high-unit cost water supply systems, on the same basis as provided in G.S. 159G-6(b)(2) for high-unit cost wastewater projects.

(3) Emergency Water Supply Revolving Loan Account. -- The funds in the Emergency Water Supply Revolving Loan Account shall be available for revolving emergency loans to applicants in the event the Division of Environmental Health certifies that a serious public health hazard, related to the water supply system, is present or imminent in a community.

~~(d) Administrative Account. -- The Office of State Budget and Management, from time to time, may allocate funds from the Administrative Account to meet the expenses of the Office of State Budget and Management, Local Government Commission, Division of Environmental Health and Environmental Management Commission incurred in the administration of this Chapter in excess of normal operating expenses.~~

~~Each agency entitled to receive administrative expense funds from the Administrative Account shall prepare an itemized estimate of administrative funds required for the succeeding fiscal year, and the Division of Environmental Health, the Local Government Commission and the Environmental Management Commission shall deliver their estimates to the Office of State Budget and Management at least 45 days prior to the beginning of the fiscal year for which the funds are required. The Office of State Budget and Management shall determine the administrative expense funds available and, along with its recommendations, shall deliver the estimates of the Division of Environmental Health, the Local Government Commission and of the Environmental Management Commission and its own estimate, if any, to the Advisory Budget Commission at least 30 days prior to the beginning of the fiscal year for which the funds are required. Any administrative expense funds shall be disbursed by the Office of State Budget and Management to the appropriate agency. If the administrative expense funds disbursed to any agency shall prove insufficient, it may apply at any time during the fiscal year for additional funds in the manner above provided.~~

(e) Notwithstanding any other provision of this Chapter, funds in the Water Pollution Control Revolving Fund shall not be available as grants except to the extent permitted by Title VI of the Federal Water Quality Act of 1987 and the regulations thereunder."

Sec. 5. G.S. 159G-8(a) reads as rewritten:

"(a) Application. -- All applications for revolving loans and grants for water supply systems shall be filed with the Division of Environmental Health and all applications for revolving loans and

grants for wastewater treatment works or wastewater collection systems shall be filed with the Environmental Management Commission. ~~Every applicant shall also file with the Office of State Budget and Management such information concerning the application as the Office of State Budget and Management may require by rules adopted pursuant to this Chapter.~~ Any application may be filed in as many categories as it is eligible for consideration under this Chapter. Applications for revolving construction loans or grants for wastewater treatment works and wastewater collection systems, except applications for emergency wastewater loans, shall first be submitted for a loan or grant from the Water Pollution Control Revolving Fund established by G.S. 159G-5(c). If the application is denied, the application shall then be considered for a revolving loan or a grant from the General Wastewater Revolving Loan and Grant account established under G.S. 159-6(b)(1).

The ~~Office of State Budget and Management, the Division of Environmental Health~~ Department of Environment, Health, and Natural Resources, the Commission for Health Services, and the Environmental Management Commission may develop jointly and adopt a standard form of application under this Chapter. Any application for construction grants under the Federal Water Pollution Control Act may be considered as an application for revolving construction loans or grants under G.S. 159G-5(c) and G.S. 159G-6(b)(1). The information required to be set forth in the application shall be sufficient to permit the respective agencies to determine the eligibility of the applicant and to establish the priority of the application, as set forth in this Chapter.

Any applicant shall furnish information in addition or supplemental to the information contained in its application upon request by the receiving agency."

Sec. 6. G.S. 159G-12 reads as rewritten:

"*§ 159G-12. Disbursement.*

(a) No funds shall be disbursed by the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources for any revolving loan or grant until it has received from the receiving agency a certificate of eligibility to the effect that the applicant meets all eligibility criteria, and that all procedural requirements of this Chapter have been met.

(b) In the event that the revolving loan or grant payments are to be made in installments, no payment shall be disbursed by the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources until the receiving agency submits a written request for disbursement.

(c) The receiving agency, in its sole discretion, may determine whether the payment of any revolving loan or grant made under this Chapter shall be in a lump sum or in installments as progress payments and shall, by adoption of appropriate rules and regulations, provide for the manner of approval and payment of revolving loans or grants. The State Treasurer, with the approval of the receiving agency and consistent with the provisions of G.S. 159G-6(a)(3), shall, by adoption of appropriate rules, provide for the payment of revolving loans or grants."

Sec. 7. G.S. 159G-15 reads as rewritten:

"§ *159G-15. Rules.*

(a) The ~~Office of State Budget and Management,~~ Department of Environment, Health, and Natural Resources, the Commission for Health ~~Services~~ Services, and the Environmental Management Commission may adopt, modify and repeal rules establishing the procedures to be followed in the administration of this Chapter and regulations interpreting and applying the provisions of this Chapter, as provided in the Administrative Procedure Act. Uniform rules may be jointly adopted where feasible and desirable, and no rule jointly adopted may be modified or revoked except upon concurrence of all agencies involved.

(b) A copy of its rules adopted to implement the provisions of this Chapter shall be furnished free of charge by the receiving agency and the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources to any local government unit."

Sec. 8. G.S. 159G-16 reads as rewritten:

"§ *159G-16. Federal grants and loans.*

In order to carry out the purpose of this Chapter to secure the greatest benefits possible to the citizens of this State from the funds herein appropriated, the ~~Office of State Budget and Management,~~ Department of Environment, Health, and Natural Resources, the Commission for Health ~~Services~~ Services, and the Environmental Management Commission shall adopt such rules and criteria, not inconsistent with the provisions of this Chapter, as are necessary and appropriate to conform to regulations for federal grants and loans for any of the purposes set forth in this Chapter."

Sec. 9. G.S. 159G-17 reads as rewritten:

"§ *159G-17. Annual reports to Joint Legislative Commission on Governmental Operations.*

(a) The ~~Office of State Budget and Management,~~ Department of Environment, Health, and Natural Resources, the Division of Environmental ~~Health~~ Health, and the Environmental Management Commission shall prepare and file on or before July 31 of each year

with the Joint Legislative Commission on Governmental Operations a consolidated report for the preceding fiscal year concerning the allocation of revolving loans and grants authorized by this Chapter.

(b) ~~Office of State Budget and Management. --~~ The portion of the report prepared by the ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources shall set forth for the preceding fiscal year ~~itemized and total allocations from the Administrative Account for administrative expenses;~~ itemized and total allocations from the Wastewater Accounts of revolving loans and grants authorized by the Environmental Management Commission; and itemized and total allocations from the Water Supply Accounts of revolving loans and grants authorized by the Division of Environmental Health. The ~~Office of State Budget and Management~~ Department of Environment, Health, and Natural Resources shall also prepare a summary report of all allocations made from the Clean Water Revolving Loan and Grant Fund for each fiscal year; the total funds received and allocations made; and unallocated funds on hand in each account as of the end of the preceding fiscal year.

(c) Environmental Management Commission and Division of Environmental Health. -- The portions of the report prepared by the Environmental Management Commission and the Division of Environmental Health shall include:

(1) Identification of each revolving loan and grant made by the receiving agency during the preceding fiscal year; the total amount of the revolving loan and grant commitments; the sums actually paid during the preceding fiscal year to each revolving loan and grant made and to each revolving loan and grant previously committed but unpaid; and the total revolving loan and grant funds paid during the preceding fiscal year.

~~(2) Itemization of expenditures of any administrative expense funds allocated from the Administrative Account during the preceding fiscal year.~~

(3) Summarization for all preceding years of the total number of revolving loans and grants made; the total funds committed to such revolving loans and grants; and the total sum actually paid to such revolving loans and ~~grants~~ grants. ~~and the total expenditure of administrative expense funds allocated from the Administrative Account.~~

(4) Assessment and evaluation of the effects that approved projects have had upon water pollution control and water supplies within the purposes of this Chapter and with relation to the total water pollution control and water supply problem.

(d) The report shall be signed by each of the chief executive officers of the State agencies preparing the report."

Sec. 10. G.S. 159G-18(a) reads as rewritten:

"(a) Local government units may execute debt instruments payable to the State in order to obtain revolving loans provided for in this Chapter. Local government units shall pledge as security for such obligations the user fee revenues derived from operation of the benefited facilities or systems only, or their faith and credit, or both. The faith and credit of such local government units shall not be pledged or be deemed to have been pledged unless the requirements of Article 4, Chapter 159 of the General Statutes have been met. The ~~Office of State Budget and Management and the~~ State Treasurer, with the assistance of the Local Government Commission, shall develop and adopt appropriate debt instruments for use under this Chapter. The Local Government Commission shall develop and adopt appropriate procedures for the delivery of debt instruments to the State without any public bidding therefor."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 356 **CHAPTER 187**

AN ACT TO MODIFY PENALTIES FOR VIOLATIONS OF THE COMMUNICABLE DISEASE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-25 reads as rewritten:

"§ *130A-25. Misdemeanor.*

(a) A person who violates a provision of this Chapter or the rules adopted by the Commission or a local board of health shall be guilty of a misdemeanor.

(b) A person convicted under this section for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144~~(g)~~ (f) or G.S. 130A-145 shall serve any prison sentence in McCain Hospital, Division of Prisons, Department of Correction, McCain, North Carolina; the North Carolina Correctional Center for Women, Division of Prisons, Department of Correction, Raleigh, North Carolina; or any other confinement facility designated for this purpose by the Secretary of Correction after consultation with the State Health Director. The Secretary of Correction shall consult with the State Health Director concerning the medical management of these persons.

(c) ~~In addition to other means of early discharge,~~ Notwithstanding G.S. 148-4.1, G.S. 148-13, or any other contrary provision of law, a person imprisoned for failure to obtain the treatment required by Part 3 or Part 5 of Article 6 of this Chapter, or for violation of G.S. 130A-144~~(g)~~ (f) or G.S. 130A-145 ~~may be discharged before completion of the person's sentence upon determination~~ shall not be released prior to the completion of the person's term of imprisonment unless and until a determination has been made by the District Court that ~~discharge~~ release of the person would not create a danger to the public health. This determination shall be made only after the medical consultant of the confinement facility and the State Health Director, in consultation with the local health director of the person's county of residence, have made recommendations to the Court."

Sec. 2. G.S. 148-4.1(e) reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of 20,435, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, ~~except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving,~~ except:

(1) Those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving, and

(2) Those persons convicted pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145."

Sec. 3. G.S. 148-13(f) reads as rewritten:

"(f) The provisions of this section do not apply to persons sentenced to a term of special probation under G.S. 15A-1344(e) or ~~G.S. 15A-1351(a).~~ G.S. 15A-1351(a) or to persons convicted pursuant to G.S. 130A-25 of failing to obtain the treatment required by Part 3 or Part 5 of Article 6 of Chapter 130A or of violating G.S. 130A-144(f) or G.S. 130A-145."

Sec. 4. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 357 **CHAPTER 188**

AN ACT TO REVISE THE ADVISORY FUNCTIONS OF THE NUTRITION PROGRAM IN THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-361 reads as rewritten:

"*§ 130A-361. Department to establish nutrition program.*

(a) The Department shall establish and administer a nutrition program to promote the public health by achieving and maintaining optimal nutritional status in the population through activities such as nutrition screening and assessment; dietary counseling and treatment; nutrition education; follow-up; referral; and the direct provision of food. The program ~~shall~~ may also include, but shall not be limited to, establishing policies and standards for nutritional practices; monitoring and surveillance of nutritional status; promoting interagency cooperation, professional education and consultation; providing technical assistance; conducting and supporting field research; providing direct care; and advising State and private institutions and other State and local agencies and departments in the establishment of food, nutrition and food service management standards.

(b) The Commission for Health Services shall adopt rules necessary to implement the program."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 417 **CHAPTER 189**

AN ACT TO PROVIDE A UNIFORM PROCEDURE FOR THE SITING OF ELECTRIC TRANSMISSION LINES AS RECOMMENDED BY THE UTILITIES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. A new Article is added to the General Statutes to read:

"ARTICLE 5A.

"Siting of Transmission Lines.

"*§ 62-100. Definitions.*

As used in this Article:

(1) The term 'begin to construct' includes any clearing of land, excavation, or other action that would adversely affect the natural environment of the route of a transmission line; but

that term does not include land surveys, boring to ascertain geological conditions, or similar preliminary work undertaken to determine the suitability of proposed routes for a transmission line that results in temporary changes to the land;

(2) The word 'county' means any one of the counties listed in G.S. 153A-10;

(3) The word 'land' means any real estate or any estate or interest in real estate, including water and riparian rights, regardless of the use to which it is devoted;

(4) The word 'lines' means distribution lines and transmission lines collectively;

(5) The word 'municipality' means any incorporated community, whether designated as a city, town, or village and any area over which it exercises any of the powers granted by Article 19 of Chapter 160A of the General Statutes;

(6) The term 'public utility' means a person, whether organized under the laws of this State or under the laws of any other state or country, engaged in producing, generating, transmitting, delivering, or furnishing electricity for private or public use, including counties, municipalities, joint municipal power agencies, electric membership corporations, and public and private corporations; and

(7) The term 'transmission line' means an electric line designed with a capacity of at least 161 kilovolts.

"§ *62-101. Certificate to construct transmission line.*

(a) No public utility or any other person may begin to construct a new transmission line without first obtaining from the Commission a certificate of environmental compatibility and public convenience and necessity.

(b) A transmission line for which a certificate is required shall be constructed, operated, and maintained in conformity with the certificate. A certificate may be amended or transferred with the approval of the Commission.

(c) A certificate is not required for construction of the following lines:

(1) A line designed to carry less than 161 kilovolts;

(2) The replacement or expansion of an existing line with a similar line in substantially the same location, or the rebuilding, upgrading, modifying, modernizing, or reconstructing of an existing line for the purpose of increasing capacity or widening an existing right-of-way;

(3) A transmission line over which the Federal Energy Regulatory Commission has licensing jurisdiction, if the Commission determines that agency has conducted a proceeding substantially equivalent to the proceeding required by this Article;

(4) Any transmission line for which, before March 6, 1989, a public utility or other person has surveyed a proposed route and, based on that route, has acquired rights-of-way for it by voluntary conveyances or has filed condemnation proceedings for acquiring those rights-of-way which, together, involve twenty-five percent (25%) or more of the total length of the proposed route;

(5) An electric membership corporation owned transmission line for which the construction or upgrading has had a proceeding conducted which the Commission determines is substantially equivalent to the proceeding required by this Article;

(6) Any line owned by a municipality to be constructed wholly within the corporate limits of that municipality.

(d) The Commission may waive the notice and hearing requirements of this Article and issue a certificate or amend an existing certificate under either of the following circumstances:

(1) When the Commission finds that the owners of land to be crossed by the proposed transmission line segment do not object to such a waiver and either:

a. The transmission line will be less than one mile long; or

b. The transmission line is for the purpose of relocating an existing transmission line segment to resolve a highway or other public project conflict; to accommodate a commercial, industrial, or other private development conflict; or to connect an existing transmission line to a substation, to another public utility, or to a public utility customer when any of these is in proximity to the existing transmission line.

(2) If the urgency of providing electric service requires the immediate construction of the transmission line, provided that the Commission shall give notice to those parties listed in G.S. 62-102(b) before issuing a certificate or approving an amendment.

(e) When justified by the public convenience and necessity and a showing that circumstances require immediate action, the Commission may permit an applicant for a certificate to proceed with initial clearing, excavation, and construction before receiving the certificate required by this section. In so proceeding, however, the applicant

acts at its own risk, and by granting such permission, the Commission does not commit to ultimately grant a certificate for the transmission line.

(f) Nothing in this section restricts or impairs the Commission's jurisdiction pursuant to G.S. 62-73 to hear or make complaints.

"*§ 62-102. Application for certificate.*

(a) An applicant for the certificate described in G.S. 62-101 shall file an application with the Commission containing the following information:

(1) The reasons the transmission line is needed;

(2) A description of the proposed location of the transmission line;

(3) A description of the proposed transmission line;

(4) An environmental report setting forth:

a. The environmental impact of the proposed action;

b. Any proposed mitigating measures that may minimize the environmental impact; and

c. Alternatives to the proposed action.

(5) A list of all necessary approvals that the applicant must obtain before it may begin to construct the transmission line; and

(6) Any other information the Commission requires.

(b) Within 10 days of filing the application, the applicant shall serve a copy of it on each of the following in the manner provided in G.S. 1A-1, Rule 4:

(1) The Public Staff;

(2) The Attorney General;

(3) The Department of Environment, Health, and Natural Resources;

(4) The Department of Economic and Community Development;

(5) The Department of Transportation;

(6) The Department of Agriculture;

(7) The Department of Cultural Resources;

(8) Each county through which the applicant proposes to construct the transmission line;

(9) Each municipality through whose jurisdiction the applicant proposes to construct the transmission line; and

(10) Any other party that the Commission orders the applicant to serve.

The copy of the application served on each shall be accompanied by a notice specifying the date on which the application was filed.

(c) Within 10 days of the filing of the application, the applicant shall give public notice to persons residing in each county and

municipality in which the transmission line is to be located by publishing a summary of the application in newspapers of general circulation so as to substantially inform those persons of the filing of the application. This notice shall thereafter be published in those newspapers a minimum of three additional times before the time for parties to intervene has expired. The summary shall also be sent to the North Carolina State Clearinghouse. The summary shall be subject to prior approval of the Commission and shall contain at a minimum the following:

(1) A summary of the proposed action;

(2) A description of the location of the proposed transmission line written in a readable style;

(3) The date on which the application was filed; and

(4) The date by which an interested person must intervene.

(d) Inadvertent failure of service on or notice to any municipality, county, governmental agency, or other person described in this section may be cured by an order of the Commission designed to give that person adequate notice to enable effective participation in the proceeding.

(e) An application for an amendment of a certificate shall be in a form approved by and shall contain any information required by the Commission. Notice of such an application shall be in the same manner as for a certificate.

"*§ 62-103. Parties.*

(a) The following persons shall be parties to a certification proceeding under this Article:

(1) The applicant;

(2) The Public Staff.

(b) The following persons may intervene in a certification proceeding under this Article if a petition to intervene is filed with the Commission within 100 days of the filing of the application and the petition is subsequently granted:

(1) Any State department, municipality, or county entitled to notice under G.S. 62-102(b);

(2) Any person whose land will be crossed by the proposed line;

(3) Any other person who can show a substantial interest in the certification proceeding.

"*§ 62-104. Hearings.*

(a) The Commission shall schedule a hearing upon each application filed under this Article not more than 120 days after the filing and shall conclude the proceeding as expeditiously as possible. The Commission may, however, extend this time period for substantial cause.

(b) If, after proper notice of the application has been given, no significant protests are filed with the Commission, the Commission may cancel the hearing and decide the case on the basis of the filed record.

(c) The Commission shall issue an order on each application filed under this Article within 60 days of the conclusion of the hearing. The Commission may extend this time period for substantial cause.

"*§ 62-105. Burden of proof; decision.*

(a) The burden of proof is on the applicant in all cases under this Article, except that any party proposing an alternative location for the proposed transmission line shall have the burden of proof in sustaining its position. The Commission may consider any factors that it finds are relevant and material to its decision. The Commission shall grant a certificate for the construction, operation, and maintenance of the proposed transmission line if it finds:

(1) That the proposed transmission line is necessary to satisfy the reasonable needs of the public for an adequate and reliable supply of electric energy;

(2) That, when compared with reasonable alternative courses of action, construction of the transmission line in the proposed location is reasonable, preferred, and in the public interest;

(3) That the costs associated with the proposed transmission line are reasonable;

(4) That the impact the proposed transmission line will have on the environment is justified considering the state of available technology, the nature and economics of the various alternatives, and other material considerations; and

(5) That the environmental compatibility, public convenience, and necessity require the transmission line.

(b) If the Commission determines that the location of the proposed transmission line should be modified, it may condition its certificate upon modifications it finds necessary to make the findings and determinations set forth in subsection (a) of this section.

"*§ 62-106. Effect of local ordinances.*

Within 30 days after receipt of notice of an application as provided by G.S. 62-102, a municipality or county shall file with the Commission and serve on the applicant the provisions of an ordinance that may affect the construction, operation, or maintenance of the proposed transmission line in the manner provided by the rules of the Commission. If the municipality or county does not serve notice as provided above of any such ordinance provisions, the provisions of such ordinance may not be enforced by the municipality or county. If the applicant proposes not to comply with any part of the ordinance,

the applicant may move the Commission for an order preempting that part of the ordinance. Service of the motion on the municipality or county by the applicant shall make the municipality or county a party to the proceeding. If the Commission finds that the greater public interest requires it, the Commission may include in a certificate issued under this Article an order preempting any part of such county or municipal ordinance with respect to the construction, operation or maintenance of the proposed transmission line.

"*§ 62-107. Rules.*

Pursuant to G.S. 62-31, the Commission may adopt rules to carry out the purposes of this Article. In addition, the Commission shall adopt rules requiring public utilities to file periodic reports stating their short-term and long-term plans for construction of transmission lines in this State."

Sec. 2. G.S. 62-300(a) is amended by adding a new subdivision at the end to read:

"(13) Two hundred fifty dollars ($250.00) with each application for a certificate of public convenience and necessity to construct a transmission line."

Sec. 3. This act becomes effective December 1, 1991, but shall not apply to any transmission line that the public utility or other person has begun to construct before that date.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 476 **CHAPTER 190**

AN ACT TO REGULATE THE TEMPERATURE OF HOME WATER HEATERS TO HELP REDUCE THE RISK OF INJURIES AND DEATH.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new section to read:

"*§ 66-27.1A. Water heater thermostat settings.*

(a) The thermostat of any new residential water heater offered for sale or lease for use in a single-family or multifamily dwelling in the State shall be preset by the manufacturer or installer no higher than approximately 120 degrees Fahrenheit (or 49 degrees Celsius). A water heater reservoir temperature may be set higher if it is supplying space heaters that require higher temperatures. For purposes of this section, a water heater shall mean the primary source of hot water for any single-family or multifamily residential dwelling including, but not limited to any solar or other hot water heating systems.

(b) Nothing in this section shall prohibit the occupant of a single-family or multiunit residential dwelling with an individual water heater from resetting or having reset the thermostat on the water heater. Any such resetting shall relieve the manufacturer or installer of the water heater and, in the case of a residential dwelling that is leased or rented, also the unit's owner, from liability for damages attributed to the resetting.

(c) A warning tag or sticker shall be placed on or near the operating thermostat control of any residential water heater. This tag or sticker shall state that the thermostat settings above the preset temperature may cause severe burns. This tag or sticker may carry such other appropriate warnings as may be agreed upon by manufacturers, installers, and other interested parties."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 660 **CHAPTER 191**

AN ACT TO REPEAL THE BOAT HULL ANTI-COPYING ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 75A of the General Statutes is repealed.

Sec. 2. This act is effective upon ratification, and shall not affect any action brought before that date.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 661 **CHAPTER 192**

AN ACT TO ADD TO THE LIST OF FIDUCIARY POWERS THE POWERS TO DIVIDE ONE TRUST INTO SEVERAL TRUSTS AND TO CONSOLIDATE SIMILAR TRUSTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 32-27 is amended by adding two new subdivisions to read:

"(25.1) Divide One Trust into Several Trusts. -- To divide the funds and properties constituting any trusts into two or more separate trusts that represent two or more fractional shares of the funds and properties being divided.

(25.2) Consolidate Similar Trusts. -- When the trustee is trustee of more than one trust, the terms of which are substantially similar and the beneficiaries of which are identical, to consolidate the assets of those trusts and administer the assets as one trust under the terms of one of the trusts."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 8 **CHAPTER 193**

AN ACT TO IMPROVE THE ADMINISTRATION OF THE HIGHWAY TRUST FUND AND TO MAKE TECHNICAL CHANGES TO THE LAWS AFFECTED BY THE HIGHWAY TRUST FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-187.4(b) reads as rewritten:

"(b) Sale by Retailer. When a certificate of title for a motor vehicle is issued because of a sale of the motor vehicle by a retailer, the applicant for the certificate of title must attach a copy of the bill of sale for the motor vehicle to the application. A retailer who sells a motor vehicle may collect from the purchaser of the vehicle the tax payable upon the issuance of a certificate of title for the vehicle, apply for a certificate of title on behalf of the purchaser, and remit the tax due on behalf of the purchaser. If a check submitted by a retailer in payment of taxes collected under this section is not honored by the financial institution upon which it is drawn because the retailer's account did not have sufficient funds to pay the check or the retailer did not have an account at the institution, the Division may suspend or revoke the license issued to the retailer under Article 12 of Chapter 20 of the General Statutes."

Sec. 2. G.S. 20-294 reads as rewritten:

"§ *20-294. Grounds for denying, suspending or revoking licenses.*

A license may be denied, suspended or revoked on any one or more of the following grounds:

(1) Material misstatement in application for license.

(2) Willful and intentional failure to comply with any provision of this Article or Article 15 or the willful and intentional violation of G.S. 20-52.1, 20-75, 20-79, 20-82, 20-108, 20-109 or rescission and cancellation of dealer's license and dealer's plates under G.S. 20-110(e) or 20-110(f) or

any lawful rule or regulation promulgated by the Division under this Article.

(3) Being a motor vehicle dealer, failure to have an established place of business as defined in this Article.

(4) Willfully defrauding any retail buyer, to the buyer's damage, or any other person in the conduct of the licensee's business.

(5) Employment of fraudulent devices, methods or practices in connection with compliance with the requirements under the laws of this State with respect to the retaking of motor vehicles under retail installment contracts and the redemption and resale of such motor vehicles.

(6) Having used unfair methods of competition or unfair deceptive acts or practices.

(7) Knowingly advertising by any means, any assertion, representation or statement of fact which is untrue, misleading or deceptive in any particular relating to the conduct of the business licensed or for which a license is sought.

(8) Knowingly advertising a used motor vehicle for sale as a new motor vehicle.

(9) Conviction of an offense set forth under G.S. 20-106, 20-106.1, 20-107, 20-112 while holding such a license or within five years next preceding the date of filing the application; or conviction of a felony involving moral turpitude under the laws of this State, any other state, territory or the District of Columbia or of the United States.

(10) Submitting a bad check to the Division of Motor Vehicles in payment of highway use taxes collected by the licensee."

Sec. 3. G.S. 105-187.5(d) reads as rewritten:

"(d) ~~Reporting~~ Administration. The Division shall notify the Secretary of Revenue of a retailer who makes the election under this section. A retailer who makes this election shall report and remit to the Secretary the tax on the gross receipts of the lease or rental of the motor vehicle ~~as if the gross receipts were taxable under G.S. 105-164.4(a)(2)~~. The Secretary shall administer the tax imposed by this section on gross receipts in the same manner as the tax levied under G.S. 105-164.4(a)(2). The administrative provisions and powers of the Secretary that apply to the tax levied under G.S. 105-164.4(a)(2) apply to the tax imposed by this section. In addition, the Division may request the Secretary to audit a retailer who elects to pay tax on gross receipts under this section. When the Secretary conducts an audit at the request of the Division, the Division shall reimburse

the Secretary for the cost of the audit, as determined by the Secretary. In conducting an audit of a retailer under this section, the Secretary may audit any sales of motor vehicles made by the retailer."

Sec. 4. G.S. 105-187.6 reads as rewritten:

"*§ 105-187.6. Exemptions from highway use tax.*

(a) Full Exemptions. -- The tax imposed by this Article does not apply when a certificate of title is issued as the result of a transfer of a motor vehicle:

(1) To the insurer of the motor vehicle under G.S. 20-109.1 because the vehicle is a salvage vehicle.

(2) To either a manufacturer, as defined in ~~G.S. 20-285,~~ G.S. 20-286, or a motor vehicle retailer for the purpose of ~~resale.~~ resale other than lease or rental.

(b) Partial Exemptions. -- Only the minimum tax imposed by this Article applies when a certificate of title is issued as ~~a~~ the result of ~~the~~ a transfer of a motor vehicle:

(1) By a gift between a husband and wife or a parent and child.

(2) By will or intestacy.

(3) By a distribution of marital property as a result of a divorce.

(4) To a secured party who has ~~filed~~ a perfected security interest in the motor ~~vehicle with the Department of the Secretary of State.~~ vehicle.

(5) To a partnership or corporation as an incident to the formation of the partnership or corporation and no gain or loss arises on the transfer under section 351 or section 721 of the Internal Revenue Code, or to a corporation by merger or consolidation in accordance with ~~G.S. 55-110.~~ G.S. 55-11-06.

(6) To the same owner to reflect a change in the owner's name.

(c) Out-of-state Vehicles. -- A maximum tax of one hundred dollars ($100.00) applies when a certificate of title is issued for a motor vehicle that, at the time of applying for a certificate of title, is and has been titled in another state for at least 90 days."

Sec. 5. G.S. 105-436 is repealed.

Sec. 6. Section 4 of Chapter 753 of the 1989 Session Laws reads as rewritten:

"Sec. 4. ~~These refunds~~ Refunds for taxable periods ending before October 1, 1989, shall be drawn from the Highway Fund. Refunds for taxable periods ending after September 30, 1989, shall be drawn from the Highway Fund and the Highway Trust Fund in the same percentage amounts that refunds are drawn from these Funds under G.S. 105-445."

Sec. 7. G.S. 20-57(b) reads as rewritten:

"(b) The registration card shall be delivered to the owner and shall contain upon the face thereof the name and address of the owner, space for the owner's signature, the registration number assigned to the vehicle, and ~~such~~ a description of the vehicle as determined by the Commissioner, provided that if there are more than two owners the Division may show only two owners on the registration card and indicate that additional owners exist by placing after the names listed 'et al.' ~~Upon application to the Division, the registered owner may acquire additional copies of the registration card at a fee of three dollars ($3.00) each.~~ An owner may obtain a copy of a registration card issued in the owner's name by applying to the Division for a copy and paying the fee set in G.S. 20-85."

Sec. 8. G.S. 20-85(a) reads as rewritten:

"(a) ~~Except as provided in G.S. 20-68, the following fees concerning a certificate of title for a motor vehicle and registration of a motor vehicle shall be paid to the Division.~~ The following fees are imposed concerning a certificate of title, a registration card, or a registration plate for a motor vehicle. These fees are payable to the Division and are in addition to the tax imposed by Article 5A of Chapter 105 of the General Statutes.

(1)	Each application for certificate of title	$35.00
(2)	Each application for duplicate or corrected certificate of title	10.00
(3)	Each application of repossessor for certificate of title	10.00
(4)	Each transfer of registration	10.00
(5)	Each set of replacement registration plates	10.00
(6)	Each application for duplicate registration ~~certificate~~ card	10.00
(7)	Each application for recording supplementary lien	10.00
(8)	Each application for removing a lien from a certificate of title	10.00
(9)	Each application for certificate of title for a motor vehicle transferred to a manufacturer, as defined in ~~G.S. 20-285,~~ G.S. 20-286, or a motor vehicle retailer for the purpose of resale	10.00."

Sec. 9. G.S. 136-176(a) reads as rewritten:

"(a) A special account, designated the North Carolina Highway Trust Fund, is created within the State treasury. The Trust Fund consists of the following revenue:

(1) Motor fuel, special fuel, and road tax revenue deposited in the Fund under G.S. 105-445, 105-449.16, and 105-449.43, respectively.
(2) Motor vehicle use tax deposited in the Fund under G.S. ~~105-173.~~ 105-187.9.
(3) Revenue from the certificate of title fee and other fees payable under G.S. 20-85.
(4) Revenue available from the retirement of refunding bonds issued to repay highway construction bonds and deposited in the Fund under G.S. 136-183.
(5) Interest and income earned by the Fund."

Sec. 10. Sections 1 and 2 of this act become effective July 1, 1991. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 243 **CHAPTER 194**

AN ACT TO PROVIDE THAT DAVIE COUNTY MAY PROHIBIT ISSUANCE OF A BUILDING PERMIT TO A DELINQUENT TAXPAYER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-357 reads as rewritten:

"§ *153A-357. Permits.*

(a) No person may commence or proceed with:
(1) The construction, reconstruction, alteration, repair, movement to another site, removal, or demolition of any building;
(2) The installation, extension, or general repair of any plumbing system;
(3) The installation, extension, alteration, or general repair of any heating or cooling equipment system; or
(4) The installation, extension, alteration, or general repair of any electrical wiring, devices, appliances, or equipment

without first securing from the inspection department with jurisdiction over the site of the work each permit required by the State Building Code and any other State or local law or local ordinance or regulation applicable to the work. A permit shall be in writing and shall contain a provision that the work done shall comply with the State Building Code and all other applicable State and local laws and local ordinances and regulations. No permit may be issued unless the plans and specifications are identified by the name and address of the author

thereof; and if the General Statutes of North Carolina require that plans for certain types of work be prepared only by a registered architect or registered engineer, no permit may be issued unless the plans and specifications bear the North Carolina seal of a registered architect or of a registered engineer. If a provision of the General Statutes of North Carolina or of any ordinance requires that work be done by a licensed specialty contractor of any kind, no permit for the work may be issued unless the work is to be performed by such a duly licensed contractor. No permit issued under Articles 9 or 9C of G.S. Chapter 143 shall be required for any construction, installation, repair, replacement, or alteration costing five thousand dollars ($5,000) or less in any single-family residence or farm building unless the work involves: the addition, repair or replacement of load bearing structures; the addition (excluding replacement of same size and capacity) or change in the design of plumbing; the addition, replacement or change in the design of heating, air conditioning, or electrical wiring, devices, appliances, or equipment; the use of materials not permitted by the North Carolina Uniform Residential Building Code; or the addition (excluding replacement of like grade of fire resistance) of roofing. Violation of this section constitutes a misdemeanor.

(b) No permit shall be issued pursuant to subsection (a) for any land-disturbing activity, as defined in G.S. 113A-52(6), for any activity covered by G.S. 113A-57, unless an erosion control plan has been approved by the Sedimentation Pollution Control Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 for the site of the activity or a tract of land including the site of the activity.

(c) A county may by ordinance provide that a permit may not be issued under subsection (a) to a person who owes delinquent property taxes, determined under G.S. 105-360, on property owned by the person."

Sec. 2. This act applies to Davie County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 460 **CHAPTER 195**

AN ACT TO MAKE AMENDMENTS TO THE STATUTES GOVERNING HEALTH MAINTENANCE ORGANIZATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-67-50(a) reads as rewritten:

"(a) (1) Every enrollee residing in this State is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a hospital or medical service corporation, whether by option or otherwise, the insurer or the hospital or medical service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this State until a copy of the form of the evidence of coverage, or amendment thereto, has been filed with and approved by the Commissioner.

(3) An evidence of coverage shall contain:

a. No provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or which are untrue, misleading or deceptive as defined in G.S. 58-67-65(a); and

b. A clear and complete statement, if a contract, or a reasonably complete summary, if a certificate of:

1. The health care services and insurance or other benefits, if any, to which the enrollee is entitled under the health care plan;
2. Any limitations on the services, benefits, or kind of benefits, to be provided, including any deductible or copayment feature;
3. Where and in what manner information is available as to how services may be obtained;
4. The total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or an indication whether the plan is contributory or noncontributory with respect to group certificates;
5. A clear and understandable description of the health maintenance organization's method of resolving enrollee ~~complaints.~~ complaints;
6. A description of the reasons, if any, for which an enrollee's enrollment may be terminated for cause, which reasons may include behavior that seriously impairs the health maintenance organization's ability to provide services or an inability to establish and maintain a satisfactory

physician-patient relationship after reasonable efforts to do so have been made.

Any subsequent change may be evidenced in a separate document issued to the enrollee.

(4) A copy of the form of the evidence of coverage to be used in this State, and any amendment thereto, shall be subject to the filing and approval requirements of subsection (b) unless it is subject to the jurisdiction of the Commissioner under the laws governing health insurance or hospital or medical service corporations in which event the filing and approval provisions of such laws shall apply. To the extent, however, that such provisions do not apply the requirements in subsection (c) shall be applicable."

Sec. 2. G.S. 58-53-70 reads as rewritten:

"*§ 58-53-70. Exclusions.*

~~The~~ An insurer shall not be required to issue a converted policy covering any person if such person is or can be covered by Medicare. Furthermore, ~~the~~ an insurer shall not be required to issue a converted policy covering any person if:

(1) a. Such person is covered for similar benefits by another hospital, surgical, medical or major medical expense insurance policy, or hospital or medical service subscriber contract or medical practice or other prepayment plan, or by any other plan or program;

b. Such person is or could be covered for similar benefits, whether or not covered for such benefits, under any arrangement of coverage for individuals in a group, whether insured or uninsured; or

c. Similar benefits are provided for or available to such person, whether or not covered for such benefits, by reason of any State or federal law; and

(2) The benefits under sources of the kind referred to in subdivision (1)a of this section for such person, or benefits provided or available under sources of the kind referred to in subdivisions (1)b and (1)c of this section for such person, together with the converted policy's benefits would result in overinsurance according to the insurer's standards for ~~overinsurance.~~ overinsurance; or

(3) An enrollee's enrollment in a health maintenance organization has been terminated for cause in accord with the terms of the enrollee's evidence of coverage or the health maintenance organization's contract with the group."

Sec. 3. G.S. 58-53-75 reads as rewritten:

"§ 58-53-75. *Information.*

A converted policy may provide that ~~the~~ an insurer may at any time request information of ~~the~~ an insured policyholder with respect to any person covered thereunder as to whether he is covered for the similar benefits described in G.S. 58-53-70(1)a or is or could be covered for the similar benefits described in G.S. 58-53-70(1)b and 58-53-70(1)c. The converted policy may provide that as of any premium due date ~~the~~ an insurer may refuse to renew the policy or the coverage of any insured person for the following reasons only:

(1) Either those similar benefits for which such person is or could be covered, together with the converted policy's benefits, would result in overinsurance according to the insurer's standards for overinsurance, or the policyholder of the converted policy fails to provide the requested information;

(2) Fraud or material misrepresentation in applying for any benefits under the converted policy; ~~or~~

(3) Eligibility of any insured person for coverage under Medicare, or under any other State or federal law providing benefits substantially similar to those provided by the converted ~~policy.~~ policy; or

(4) Termination of an enrollee's enrollment in a health maintenance organization for cause in accord with the terms of the enrollee's evidence of coverage or the health maintenance organization's contract with the group."

Sec. 4. G.S. 58-67-5(i) reads as rewritten:

"(i) 'Net worth' means the excess of total assets over the total liabilities and may include borrowed funds that are repayable only from the net earned income of the health maintenance organization and repayable only with the advance permission of the Commissioner. ~~In determining net worth only tangible assets shall be considered.~~ For the purposes of this subsection, 'assets' means (i) tangible assets and (ii) other investments permitted under G.S. 58-67-60; provided, however, that the depreciated cost of office furniture and equipment in the principal office shall not exceed ten percent (10%) of a health maintenance organization's net worth."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 483 **CHAPTER 196**

AN ACT TO MAKE IMPROVEMENTS IN THE FINANCIAL REGULATION OF CONTINUING CARE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-64-5(a) reads as rewritten:

"(a) No provider shall engage in the business of offering or providing continuing care in this State without a license to do so obtained from the Commissioner as provided in this Article. The licensing process may involve a series of steps pursuant to rules adopted by the Commissioner under this Article."

Sec. 2. G.S. 58-64-5 is amended by adding a new subsection to read:

"(g) The Commissioner may require a facility to: (i) provide the report of an actuary that estimates the capacity of the provider to meet its contractual obligation to the resident, or (ii) give consideration to expected rates of mortality and morbidity, expected refunds, and expected capital expenditures in accordance with standards promulgated by the American Academy of Actuaries, within the five-year forecast statements, as required by G.S. 58-64-20(a)(12)."

Sec. 3. G.S. 58-64-20(a)(11) through (14) read as rewritten:

"(11) ~~A summary of a report of an actuary, updated at least every five years, that estimates the capacity of the provider to meet its contractual obligation to the residents. Disclosure statements of continuing care facilities established prior to January 1, 1988, do not need an acturial report or summary until January 1, 1993.~~ In the event the facility has had an actuarial report prepared within the prior two years, the summary of a report of an actuary that estimates the capacity of the provider to meet its contractual obligations to the residents.

(12) ~~For proposed or development stage facilities, a statement of the anticipated sources and uses of funds, including but not limited to:~~

~~a. An estimate of the cost of the acquisition of the facility or, if the facility is to be constructed, an estimate of the cost of the acquisition of the land and construction cost of the facility;~~

~~b. An estimate of the marketing and resident acquisition costs to be incurred prior to commencement of operations;~~

~~c. An estimate of related costs such as financing fees, legal expenses, feasibility study fees and any other development costs which the provider anticipates to incur or become obligated for prior to the commencement of operations;~~

~~d. A description of any equity capital to be received by the facility;~~

~~e. A description of any long term financing for the purchase or construction of the facility;~~

~~f. An estimate of the total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations;~~

~~g. A description of any other funding sources which the provider anticipates using to fund any start up losses or to provide reserve funds to assure full performance of the obligations of the provider under contracts for the provision of continuing care; and~~

~~h. Note disclosure detailing all significant assumptions used in the preparation of the statement of sources and uses of funds, including but not limited to: information regarding the requirements for the refund of residents life occupancy fees, if any, as required in the contracts for continuing care; a description of the provider's anticipated accounting method used in the recognition of revenue from life occupancy fees; all pertinent details of long term financing to include interest rate, repayment terms, and, if applicable, loan covenants; and all pertinent details regarding the financing costs and repayment terms of other financing sources.~~

Forecast financial statements for the facility of the next five years, including a balance sheet, a statement of operations, a statement of cash flows, and a statement detailing all significant assumptions, compiled by an independent certified public accountant. Reporting routine, categories, and structure may be further defined by regulations or forms adopted by the Commissioner.

(13) ~~Forecast statements of revenues and expenses and cash flows for the facility for each of the next five fiscal years, including but not limited to:~~

~~a. Detail of revenues and support to include the following categories as a minimum: members' residency charges, amortization of life occupancy fees, guests' meals and lodging, health center routine services, health center special services, health center adjustments and allowances, investment income, contributions for restricted projects and gifts and bequests;~~

~~b. Detail of operating expenses to include the following categories as a minimum: health center, dietary, housekeeping, maintenance, administration,~~

~~development and marketing, depreciation, and interest; and~~

~~c. Note disclosure detailing all significant assumptions used in the preparation of the statements of revenues and expenses and cash flows, including but not limited to: information regarding the requirements for the refund of residents' occupancy fees, if any, as required in the contracts for continuing care; a description of the provider's accounting method used in the recognition of revenue from life occupancy fees; a schedule of residency charges anticipated to be charged, including estimated occupancy percentages and the effect, if any, of government subsidies for health care services to be provided pursuant to the contracts for continuing care; all pertinent details of long term financing, to include interest rate, repayment terms, and, if applicable, loan covenants; an estimate of any reserves that might be required for the replacement of equipment or furnishings or anticipated major structural repairs or additions, and all pertinent details regarding the financing costs and repayment terms of other financing sources.~~

The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.

(14) ~~The estimated number of residents of the facility to be provided services by the provider pursuant to the contract for continuing care.~~

Proposed or development stage facilities shall additionally provide:

a. The summary of the report of an actuary estimating the capacity of the provider to meet its contractual obligation to the residents;

b. Narrative disclosure detailing all significant assumptions used in the preparation of the forecast financial statements, including:

1. Details of any long-term financing for the purchase or construction of the facility including interest rate, repayment terms, loan covenants, and assets pledged;

2. Details of any other funding sources that the provider anticipates using to fund any start-up losses or to provide reserve funds to assure full performance of the obligations of the provider

under contracts for the provision of continuing care;

3. The total life occupancy fees to be received from or on behalf of, residents at, or prior to, commencement of operations along with anticipated accounting methods used in the recognition of revenues from and expected refunds of life occupancy fees;
4. A description of any equity capital to be received by the facility;
5. The cost of the acquisition of the facility or, if the facility is to be constructed, the estimated cost of the acquisition of the land and construction cost of the facility;
6. Related costs, such as financing any development costs that the provider expects to incur or become obligated for prior to the commencement of operations;
7. The marketing and resident acquisition costs to be incurred prior to commencement of operations; and
8. A description of the assumptions used for calculating the estimated occupancy rate of the facility and the effect on the income of the facility of government subsidies for health care services."

Sec. 4. G.S. 58-64-25(a) reads as rewritten:

"(a) Each contract for continuing care shall provide that:

(1) The party contracting with the provider may rescind the contract within 30 days following the later of the execution of the contract or the receipt of a disclosure statement that meets the requirements of this section, ~~in which event any money or property transferred to the provider, other than periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident, shall be returned in full,~~ and the resident to whom the contract pertains is not required to move into the facility before the expiration of the 30-day period; and

(2) If a resident dies before occupying a living unit in the facility, or if, on account of illness, injury, or incapacity, a resident would be precluded from occupying a living unit in the facility under the terms of the contract for continuing care, the contract is automatically ~~canceled~~ canceled; and ~~the resident or legal representative of the resident shall receive a refund of all money or property transferred to the provider,~~

~~less (i) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or an addendum thereto signed by the resident, and (ii) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee.~~

(3) For rescinded or canceled contracts under this section, the resident or the resident's legal representative shall receive a refund of all money or property transferred to the provider, less (i) periodic charges specified in the contract and applicable only to the period a living unit was actually occupied by the resident; (ii) those nonstandard costs specifically incurred by the provider or facility at the request of the resident and described in the contract or any contract amendment signed by the resident; (iii) nonrefundable fees, if set out in the contract; and (iv) a reasonable service charge, if set out in the contract, not to exceed the greater of one thousand dollars ($1,000) or two percent (2%) of the entrance fee."

Sec. 5. Article 64 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-64-33. Operating reserves.*

(a) All continuing care facilities shall maintain after opening: operating reserves equal to fifty percent (50%) of the total operating costs projected for the 12-month period following the period covered by the most recent annual statement filed with the Department. The forecast statements as required by G.S. 58-64-20(a)(12) shall serve as the basis for computing the operating reserve. In addition to total operating expenses, total operating costs will include debt service, consisting of principal and interest payments along with taxes and insurance on any mortgage loan or other long-term financing, but will exclude depreciation, amortized expenses, and extraordinary items as approved by the Commissioner. If the debt service portion is accounted for by way of another reserve account, the debt service portion may be excluded. Facilities that maintain an occupancy level in excess of ninety percent (90%) shall only be required to maintain twenty-five percent (25%) operating reserve upon approval of the Commissioner, unless otherwise instructed by the Commissioner. The operating reserves may be funded by liquid, marketable investments, including invested cash, bonds, stocks, commercial paper, U.S. Treasury obligations, other equivalents, or under G.S. 58-7-85(a)(1) through (6), or by an unconditional, irrevocable letter of credit of a quality satisfactory to the Commissioner.

(b) A provider that has begun construction or has permanent financing in place or is in operation on the effective date of this section has up to five years to meet the operating reserve requirements.

(c) Operating reserves shall only be released upon the submittal of a detailed request from the provider or facility and must be approved by the Commissioner. Such requests must be submitted in writing for the Commissioner to review at least 10 business days prior to the date of withdrawal."

Sec. 6. G.S. 58-64-35 reads as rewritten:

"*§ 58-64-35. Escrow, collection of deposits.*

(a) Where escrow accounts are required by this Article, a ~~A~~ provider shall establish an escrow account with (i) a bank, (ii) a trust company, or (iii) another independent person or entity agreed upon by the provider and the ~~resident.~~ resident, unless such account arrangement is prohibited by the Commissioner. The terms of this escrow account shall provide that the total amount of any entrance ~~fee~~ fee, or any other fee or deposit that may be applied toward the entrance fee, received by the provider ~~prior to the date the resident is permitted to occupy a living unit in the facility~~ be placed in this escrow account. These funds may be released only as follows:

(1) ~~If the entrance fee applies to a living unit that has been previously occupied in the facility, the entrance fee shall be released to the provider when the living unit becomes available for occupancy by the new resident;~~ The first twenty-five percent (25%) of escrowed monies can be released when: (i) the provider has presold at least fifty percent (50%) of the independent living units, having received a minimum ten percent (10%) deposit on the presold units; (ii) the provider has received a commitment for any permanent mortgage loan or other long-term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and (iii) aggregate entrance fees received or receivable by the provider pursuant to binding continuing care contracts, plus the anticipated proceeds of any first mortgage loan or other long-term financing commitment are equal to not less than ninety percent (90%) of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by G.S. 58-64-20, to be necessary to fund start-up losses and assure full performance of the

obligations of the provider pursuant to continuing care contracts.

(2) ~~If the entrance fee applies to a living unit which has not previously been occupied by any resident, the entrance fee shall be released to the provider when the escrow agent is satisfied that:~~

~~a. Construction or purchase of the living unit has been completed and an occupancy permit, if applicable, covering the living unit has been issued by the local government having authority to issue such permits.~~

~~b. A commitment has been received by the provider for any permanent mortgage loan or other long term financing, and any conditions of the commitment prior to disbursement of funds thereunder have been substantially satisfied; and~~

~~c. Aggregate entrance fees received or receivable by the provider pursuant to binding continuing care retirement community contracts, plus the anticipated proceeds of any first mortgage loan or other long term financing commitment are equal to not less than ninety percent (90% of the aggregate cost of constructing or purchasing, equipping, and furnishing the facility plus not less than ninety percent (90%) of the funds estimated in the statement of cash flows submitted by the provider as that part of the disclosure statement required by G.S. 58-64-20, to be necessary to fund start-up losses and assure full performance of the obligations of the provider pursuant to continuing care retirement community contracts.~~

(2) The remaining seventy-five percent (75%) of escrowed monies can be released when:

a. (i) the provider has presold a minimum of seventy-five percent (75%) of the independent living units, having received a minimum ten percent (10%) deposit on the presold units, or has maintained an independent living unit occupancy minimum of seventy-five percent (75%) for at least 60 days; (ii) construction or purchase of the independent living unit has been completed and an occupancy permit, if applicable, has been issued by the local government having authority to issue such permits; and (iii) the living unit becomes available for occupancy by the new resident; or

b. the provider submits a plan of reorganization that is accepted and approved by the Commissioner.

(b) Upon receipt by the escrow agent of a request by the provider for the release of these escrow funds, the escrow agent shall approve release of the funds within five working days unless the escrow agent finds that the requirements of subsection (a) of this section have not been met and notifies the provider of the basis for this finding. The request for release of the escrow funds shall be accompanied by any documentation the fiduciary requires.

(c) Release of any escrowed funds that may be due to the subscriber or resident shall occur upon: five working days notice of death, nonacceptance by the facility, or voluntary cancellation. If voluntary cancellation occurs after construction has begun, the refund may be delayed until a new subscriber is obtained for that specific unit, provided it does not exceed a period of two years.

~~(c)~~ (d) If the provider fails to meet the requirements for release of funds held in this escrow account within a time period the escrow agent considers reasonable, these funds shall be returned by the escrow agent to the persons who have made payment to the provider. The escrow agent shall notify the provider of the length of this time period when the provider requests release of the funds.

~~(d)~~ (e) ~~An entrance fee held in escrow may be returned by the escrow agent to the person who made payment to the provider at any time upon receipt by the escrow agent of notice from the provider that this person is entitled to a refund of the entrance fee.~~ Facilities that currently meet the seventy-five percent (75%) presales or the seventy-five percent (75%) occupancy requirements, as outlined in G.S. 58-65-35(a)(2)(i), are not required to escrow entrance fees, unless otherwise required by the Commissioner."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 634 **CHAPTER 197**

AN ACT TO AUTHORIZE THE CITY OF OXFORD TO CONVEY CERTAIN PROPERTY FOR CONSTRUCTION OF A NEW FIRE DEPARTMENT BY LEASE-PURCHASE ARRANGEMENT.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 833 of the 1989 Session Laws reads as rewritten:

"Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Oxford in Granville County may convey at private sale the following described property or portions thereof, or ~~more~~ make lease-purchase arrangements for conversion of, and

expansion to existing buildings to house a City Hall and Fire Department:

Tract 1

Lying and being in the City of Oxford, a tract of land containing 12.5 acres more or less, and known as the D.N. Hix School Complex bounded on the east by Cooper Avenue, on the north by Williamsboro Street, on the west by Belle Street, on the south by Spring Street; the same comprising the entire block so bounded with the exception of one lot on the south west corner of the said block, which same is in the ownership of James E. Bullock and wife Carolyn H. Bullock which said excepted property is described by deed of record in Book 192, page 432 in the Granville County Registry.

Tract 2

BEGINNING at an iron pin, situated 310.93 feet from the Southeast intersection of the right-of-way of College Street and McClanahan Street, thence along the Southern right-of-way of McClanahan Street N 70°-44'-12" E 103.00 feet to an iron pin, thence S 19°-16'-10" E 173.23 feet to an iron pin, thence S 70°-56'-38" W 31.50 feet to an iron pin, thence S 19°-03'-16" E 136.50 feet to an iron pin set in the Northern right-of-way of Watkins Street, thence along the Northern right-of-way of Watkins Street S 70°-53'-43" W 67.36 feet to an iron pin, thence N 19°-56'-29" W 75.70 feet to an iron pin, thence N 19°-56'-29" W 233.75 feet to point and place of beginning, containing approximately 0.6196 acres."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 678 **CHAPTER 198**

AN ACT TO AUTHORIZE THE CITY OF BURLINGTON TO SELL SURPLUS PROPERTY TO THE RALPH SCOTT GROUP HOMES, INCORPORATED, BY PRIVATE SALE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding Article 12 of Chapter 160A of the General Statutes, the City of Burlington may convey to the Ralph Scott Group Homes, Incorporated, for monetary consideration, all of the City's right, title, and interest in the following described properties:

TRACT NO. 1:

A certain tract or parcel of land in the City of Burlington, Burlington Township, Alamance County, North Carolina, adjoining Union Avenue, the City of Burlington, E.S.W. and John L. Dameron and others and more particularly bounded and described as follows:

BEGINNING at an iron stake in the southeastern margin of Union Avenue, corner with the City of Burlington; thence with the southeastern margin of Union Avenue, N. 61 deg. 17' 06" E. 32.71 ft. to an iron stake; thence continuing with the southeastern margin of Union Avenue, N. 62 deg. 26' 06" E. 73.99 ft. to an iron stake in the southern margin of said Avenue, corner with E.S.W. and John L. Dameron; thence with Dameron, S. 27 deg. 42' 24" E. 180.09 ft. to an iron stake, corner with Tract 1 as shown on the drawing hereinafter referred to; thence with said Tract 1, S. 53 deg. 23' 38" W. 91.11 ft. to an iron stake, corner with the City of Burlington in the line of Tract 1; thence with the City of Burlington, N. 32 deg. 37' 30" W. 194.51 ft. to the point of BEGINNING and containing 0.42 acres, and being Tract 2 as shown on a drawing by Alley, Williams, Carmen & King, Inc., Engineers and Architects entitled "Property of Burlington City Board of Education" and dated April 20, 1977.

TRACT NO. 2:

A certain tract or parcel of land in the City of Burlington, Burlington Township, Alamance County, North Carolina, adjoining Mebane St. and Morehead St. and others and more particularly bounded and described as follows:

BEGINNING at an iron stake on the southeasterly side of Mebane St., corner of J. P. Montgomery's side of Mebane St., corner of J. P. Montgomery's 120 ft. in a southwesterly direction from the point where the southeasterly side of Mebane St. intersects the southwesterly side of Morehead St., running thence with said Montgomery's line, S. 55 deg. E. 203-3/4 ft. to an iron stake, corner with said Montgomery in said Stokes line; thence with the line of said Stokes, S. 35 deg. W. 80 ft. to an iron stake, corner with said Sharpe; thence with said Sharpe's line, N. 55 deg. W. 203-3/4 ft. to an iron stake on Mebane St.; thence with the line of Mebane St., N. 35 deg. E. 80 ft. to the BEGINNING; the same being the identical property conveyed by warranty deed from J. P. Montgomery and wife, Ann Elizabeth Montgomery, to Harriet Louise Stokes on August 7, 1916, and recorded in the Register of Deeds for Alamance County in Book 59, pages 368-370, to Charlie Foster, recorded in Book 142, page 41 and willed to Vivian Foster Isley by Charlie Foster.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 714 **CHAPTER 199**

AN ACT TO PERMIT VOLUNTEER FIRE DEPARTMENTS AND RESCUE SQUADS TO PURCHASE MATERIALS AND SUPPLIES UNDER STATE CONTRACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-49.1 reads as rewritten:

"*§ 143-49.1. Purchases by volunteer nonprofit fire department and lifesaving and rescue squad.*

In consideration of public service, any volunteer nonprofit fire department, lifesaving and rescue squad in this State ~~is hereby authorized to~~ may purchase gas, oil, and tires for their official vehicles and any other materials and supplies under State contract through the Department of Administration, and ~~to~~ may purchase surplus property through the Department of Administration on the same basis applicable to counties and municipalities.

The Department of Administration shall make its services available to these organizations in the purchase of such supplies under the same laws, rules and regulations applicable to nonprofit organizations as provided in G.S. 143-49."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 766 **CHAPTER 200**

AN ACT TO EXEMPT FROM THE REQUIREMENTS OF THE PUBLIC BIDDING LAWS THE CONTRACTS FOR AN ADDITION TO THE PRESENT JAIL FACILITY OF WILSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The provisions of G.S. 143-128, 143-129, and 143-132 shall not apply to the contracts let for the construction of a 64-bed addition to the present jail facility of Wilson County.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

H.B. 774 **CHAPTER 201**

AN ACT TO ALLOW THE BOARD OF TRUSTEES OF WATAUGA HOSPITAL, INCORPORATED, TO ENTER INTO SINGLE PRIME CONTRACTOR PUBLIC CONTRACTS.

Whereas, Watauga Hospital, Incorporated, seeks to construct capital improvements to the Watauga County Hospital, consisting of renovation of existing facilities and construction of new facilities; and

Whereas, the project to be constructed is of a complex nature and magnitude and involves reworking an existing ongoing hospital medical facility; consequently, specialty contractors are needed to address the special problems that evolve from reworking an existing ongoing medical facility as well as to tie in to the facility new construction that alters the complete scheme, layout, and design; and

Whereas, a single contractor is needed due to the potential severe weather in the area in which the construction will be done, and the resulting need for flexibility and coordination of various components and stages of construction; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-128(b) reads as rewritten:

"(b) Notwithstanding the provisions of subsection (a) of this section, the State, a county, municipality, department, board, commission, public hospital, or other public body, or an officer thereof may use the single-prime contract system and may prequalify bidders for all construction contracts.

~~If the public body chooses to use the single-prime contract system, it must also seek bids for the project under subsection (a) of this section and award the contract to the lowest responsible bidder or bidders for the total project.~~

For the single-prime contract system all bidders must identify on their bid the contractors they have selected for the subdivisions or branches of work for:

(1) Heating, ventilating, and air conditioning;
(2) Plumbing;
(3) Electrical; and
(4) General."

Sec. 2. (a) This act applies to Watauga Hospital, Incorporated, only and solely for the purposes of renovation of existing facilities and construction of new facilities at Watauga County Hospital.

(b) For the purposes of letting contracts for the construction of the project authorized in this act, Watauga Hospital, Incorporated, may prequalify contractors.

Sec. 3. The provisions of this act are severable and if any provision of this act is held to be invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions of the act which can be given effect without the invalid provision.

Sec. 4. This act is effective upon ratification, and expires July 1, 1992.

In the General Assembly read three times and ratified this the 3rd day of June, 1991.

S.B. 447 **CHAPTER 202**

AN ACT TO PERMIT VEHICLES TRANSPORTING HEATING FUEL TO EXCEED LIMITS ON LIGHT-TRAFFIC ROADS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-118(c) reads as rewritten:

"(c) Exceptions. -- The following exceptions apply to G.S. 20-118(b) and 20-118(e).

(1) Two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the first and last axles of such consecutive sets of tandem axles is 36 feet or more. Tank trailers, dump trailers, and ocean going transport containers on two consecutive sets of tandem axles may carry a gross weight of 34,000 pounds each without penalty provided the overall distance between the second and the fifth axles of such consecutive sets of tandem axles is 30 feet or more. The exception for tank trailers, dump trailers, and ocean transport containers shall expire August 31, 1988.

(2) When a vehicle is operated in violation of G.S. 20-118(b)(1), 20-118(b)(2), or 20-118(b)(3), but the gross weight of the vehicle or combination of vehicles does not exceed that permitted by G.S. 20-118(b)(3), the owner of the vehicle shall be permitted to shift the load within the vehicle, without penalty, from one axle to another to comply with the weight limits in the following cases:

a. Where the single-axle load exceeds the statutory limits, but does not exceed 21,000 pounds.

b. Where the vehicle or combination of vehicles has tandem axles, but the tandem-axle weight does not exceed 40,000 pounds.

(3) When a vehicle is operated in violation of G.S. 20-118(b)(4) the owner of the vehicle shall be permitted,

without penalty, to shift the load within the vehicle from one axle to another to comply with the weight limits where the single-axle weight does not exceed the posted limit by 2,500 pounds.

(4) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting supplies, material or equipment necessary to carry out a farming operation engaged in the production of meats and agricultural crops and livestock or poultry by-products or a business engaged in the harvest or processing of seafood when the destination of such vehicle and load is located solely upon said light-traffic road.

(5) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided for pursuant to G.S. 20-118(b)(4), when transporting processed and unprocessed seafood from boats or any other point of origin, meats and agricultural crop products originating from a farm, or forest products originating from a farm or from woodlands, or livestock or poultry by-products from point of origin, on a light-traffic road to the nearest State maintained road which is not posted to prohibit the transportation of statutory load limits.

(6) A truck or other motor vehicle shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4) when such motor vehicles are owned, operated by or under contract to a public utility, electric or telephone membership corporation or municipality and such motor vehicles are used in connection with installation, restoration or emergency maintenance of utility services.

(7) A wrecker may tow a disabled vehicle or combination of vehicles in an emergency to the nearest feasible point for parking or storage without being in violation of G.S. 20-118 provided that the wrecker and towed vehicle or combination of vehicles otherwise meet all requirements of this section.

(8) A firefighting vehicle operated by any member of a municipal or rural fire department in the performance of his duties, regardless of whether members of that fire department are paid or voluntary and any vehicle of a voluntary lifesaving organization, when operated by a member of that organization while answering an official call shall be exempt from such light-traffic road limitations provided by G.S. 20-118(b)(4).

(9) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences or from garbage dumpsters shall, when operating for those purposes, be exempt from the light-traffic road limitation as provided by G.S. 20-118(b)(4). This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(5), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(10) Fully enclosed motor vehicles designed specifically for collecting, compacting and hauling garbage from residences, or from garbage dumpsters shall, when operating for those purposes, be allowed a single axle weight not to exceed 23,500 pounds on the steering axle on vehicles equipped with a boom, or on the rear axle on vehicles loaded from the rear. This exemption shall not apply to vehicles transporting hazardous waste as defined in G.S. 130A-290(5), spent nuclear fuel regulated under G.S. 20-167.1, low-level radioactive waste as defined in G.S. 104E-5(9a), or radioactive material as defined in G.S. 104E-5(14).

(11) A truck or other motor vehicle shall be exempt for light-traffic road limitations issued under subdivision (b)(4) of this section when transporting heating fuel for on-premises use at a destination located on the light-traffic road."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 518 **CHAPTER 203**

AN ACT TO DEFINE AND MAKE CRIMINAL INTERFERENCE WITH ANIMAL RESEARCH.

The General Assembly of North Carolina enacts:

Section 1. Article 22 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-159.2. Interference with animal research.*

(a) It is unlawful for a person willfully to commit any of the following acts:

(1) The unauthorized entry into any research facility where animals are kept within the facility for research in the advancement of medical, veterinary, dental, or biological

sciences, with the intent to (i) disrupt the normal operation of the research facility, or (ii) damage the research facility or any personal property located thereon, or (iii) release from any enclosure or restraining device any animal kept within the research facility, or (iv) interfere with the care of any animal kept within the research facility;

(2) The damaging of any such research facility or any personal property located thereon;

(3) The unauthorized release from any enclosure or restraining device of any animal kept within any research facility; or

(4) The interference with the care of any animal kept within any research facility.

(b) Any person who commits an offense under subsection (a) of this section shall be guilty of a misdemeanor.

(c) Any person who commits an offense under subsection (a) of this section that involves the release from any enclosure or restraining device of any animal having an infectious disease shall be guilty of a Class J felony.

(d) As a condition of probation, the court may order a person convicted under this section to make restitution to the owner of the animal for damages, including the cost of restoring the animal to confinement and of restoring the animal to its health condition prior to any release, and for damages to personal property, including materials, equipment, data, and records, and real property caused by the interference. If the interference causes the failure of an experiment, the restitution may include all costs of repeating the experiment, including replacement of the animals, labor, and materials.

(e) Nothing in this section shall be construed to affect any rights or causes of action of a person damaged through interference with animal research."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 545 **CHAPTER 204**

AN ACT RELATING TO SUBDIVISION REGULATION IN PENDER COUNTY.

The General Assembly of North Carolina enacts:

Section 1. For the purpose of Part 2 of Article 18 of Chapter 153A of the General Statutes, "subdivision" means all divisions of a

tract or parcel of land into two or more lots, building sites or other divisions for the purpose of sale or building development (whether immediate or future) that requires the dedication of a new road.

The following are specifically excluded from this definition:

(1) The combination or recombination of all or any portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its zoning and subdivision ordinances;

(2) The public acquisition by purchase or gift of strips of land for widening or opening streets;

(3) The conveyance of land to heirs for the purpose of dividing real estate among said heirs, as described in the North Carolina Court of Appeals decision in Claude A. Williamson, Jr. and wife, Angela C. Williamson vs. Dorothy A. Avant, 21 N. C. App. 211;

(4) The division of land into two or more parcels or lots for the purpose of conveying the resultant parcels or lots to a grantee or grantees who are in any degree of lineal kinship to the grantor, or to a grantee or grantees who are within four degrees of collateral kinship to the grantor. Degrees of kinship would be computed in accordance with G.S. 104A-1. All parcels or lots so conveyed must meet the size requirements and the access requirements of the County in its zoning ordinance;

(5) The division of land into parcels of five acres or more, where the grantor records a right-of-way agreement prior to or simultaneously with the recording of the deed. The agreement must provide for access to the parcel by right-of-way width equal to or exceeding, and minimum curve centerline radii equal to or exceeding, the North Carolina Department of Transportation Subdivision Road requirements. The agreement must provide for construction and maintenance of the road;

(6) The division of land for cemetery lots or burial plots;

(7) Any sale, conveyance, or exchange, (including by court order) between tenants in common or joint tenants, when such sale, conveyance, or exchange is solely for the purpose of effecting a division of the lands between such tenants in common or joint tenants, and to set off their interest in severalty, and when such purpose is not for building development (whether immediate or future) or for sale to the general public. Tenants in common and joint tenants shall include all persons owning undivided interests in real

property by virtue of conveyance by deed, by will, or by inheritance.

Sec. 2. G.S. 153A-335 shall not be applicable in Pender County.

Sec. 3. This act applies only to Pender County.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 679 **CHAPTER 205**

AN ACT TO INCLUDE GEOLOGISTS AND OCCUPATIONAL THERAPISTS WITHIN THE DEFINITION OF PROFESSIONAL SERVICE IN THE PROFESSIONAL CORPORATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55B-2(6) reads as rewritten:

"(6) The term 'professional service' means any type of personal or professional service of the public which requires as a condition precedent to the rendering of such service the obtaining of a license from a licensing board as herein defined, and pursuant to the following provisions of the General Statutes: Chapter 83, 'Architects'; Chapter 84, 'Attorneys-at-Law'; Chapter 93, 'Public Accountants'; and Article 1, 'Practice of Medicine,' Article 2, 'Dentistry,' Article 6, 'Optometry,' Article 7, 'Osteopathy,' Article 8, 'Chiropractic,' Article 9A, ~~'Nurse~~ 'Nursing Practice Act,' with regard to registered nurses, Article 11, ~~'Veterinaries,'~~ 'Veterinarians,' Article 12A, 'Podiatrists,' Article 18A, 'Practicing Psychologists,' and Article 18D, 'Occupational Therapy,' of Chapter 90; ~~Article 18A, 'Practicing Psychologist,' of Chapter 90;~~ Chapter 89C, 'Engineering and Land Surveying'; Chapter 89A, 'Landscape Architects'; Chapter 89E, 'Geologists'; and Chapter 89B, 'Foresters.'"

Sec. 2. G.S. 55B-4 reads as rewritten:

"§ *55B-4. Formation of corporation.*

A professional corporation under this Chapter may be formed pursuant to the provisions of Chapter 55, the North Carolina Business Corporation Act, with the following limitations:

(1) At least one incorporator shall be a 'licensee' as hereinabove defined in G.S. 55B-2(2).

(2) All of the shares of stock of the corporation shall be owned and held by a licensee, or licensees, as hereinabove defined

in G.S. 55B-2(2). Provided, that as to professional corporations rendering services as defined in Chapters 83A, ~~89A and 89C,~~ 89A, 89C, and 89E, limited ownership of shares by non-licensees shall be permitted as set forth in G.S. 55B-6.

(3) At least one director and one officer shall be a 'licensee' as hereinabove defined in G.S. 55B-2(2).

(4) The articles of incorporation, in addition to the requirements of Chapter 55, shall designate the personal services to be rendered by the professional corporation and shall be accompanied by a certification by the appropriate licensing board that the ownership of the shares of stock is in compliance with the requirements of G.S. 55B-4(2) and G.S. 55B-6."

Sec. 3. G.S. 55B-6 reads as rewritten:

"§ *55B-6. Capital stock.*

(a) Except as provided in subsection (b), a professional corporation may issue shares of its capital stock only to a licensee as defined in G.S. 55B-2, and a shareholder may voluntarily transfer such shares of stock issued to him only to another such licensee. No share or shares of any stock of such corporation shall be transferred upon the books of the corporation unless the corporation has received a certification of the appropriate licensing board that the transferee of such shares is a licensee. Provided, it shall be lawful in the case of professional corporations rendering services as defined in Chapters 83A, ~~89A and 89C,~~ 89A, 89C, and 89E, for non-licensed employees of such corporation to own not more than one-third of the total issued and outstanding shares of such corporation. Upon the transfer of any shares of such corporation to a non-licensed employee of such corporation, the corporation shall inform the appropriate licensing board of the name and address of the transferee and the number of shares issued to such nonprofessional transferee. Any share of stock of such corporation issued or transferred in violation of this section shall be null and void. No shareholder of a professional corporation shall enter into a voting trust agreement or any other type of agreement vesting in another person the authority to exercise the voting power of any or all of his stock.

(b) A professional corporation formed pursuant to this Chapter may issue one hundred percent (100%) of its capital stock to another professional corporation in order for that corporation (the distributing corporation) to distribute the stock of the controlled corporation to one or more shareholders of the distributing corporation in accordance with section 355 of the Internal Revenue Code of 1986. The distributing corporation shall distribute the stock of the controlled

corporation within 30 days after the stock was issued to the distributing corporation. A share of stock of the controlled corporation that has not been transferred to a licensee more than 30 days after it was issued to the distributing corporation is void."

Sec. 4. G.S. 55B-14 reads as rewritten:

"*§ 55B-14. Types of professional services.*

A professional corporation shall render only one specific type professional service, and such services as may be ancillary thereto, and shall not engage in any other business or profession; provided, however, such corporation may own real and personal property necessary or appropriate for rendering the type of professional services it was organized to render and it may invest in real estate, mortgages, stocks, bonds, and any other type of investments; provided further, that in the case of architectural, landscape architectural, engineering or land surveying and geological services, as defined in Chapters 83A, 89A, ~~and 89C~~ 89C, and 89E respectively, one corporation may be authorized to provide such of these services where such corporation, and at least one corporate officer who is a stockholder thereof, is duly licensed by the licensing board of each such profession; and provided further, that a professional corporation may be formed by a licensed psychologist and a physician practicing psychiatry to render psychotherapeutic and related services."

Sec. 5. G.S. 89E-7(a) reads as rewritten:

"(a) This Chapter does not prohibit one or more geologists from practicing through the business organization of a sole proprietorship; partnership; corporation or professional association. In a ~~partnership or corporation or professional association,~~ partnership, the primary activity of which consists of geological services, at least one partner ~~or officer~~ shall be a licensed geologist as defined in this Chapter. A corporation or professional association providing geological services shall comply with the provisions of Chapter 55B of the General Statutes."

Sec. 6. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 746 **CHAPTER 206**

AN ACT TO PROVIDE FOR THE USE OF MOTORIZED WHEELCHAIRS OR SIMILAR VEHICLES NOT EXCEEDING 1000 POUNDS GROSS WEIGHT FOR PEDESTRIAN PURPOSES BY PERSONS WITH MOBILITY IMPAIRMENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 20 of the General Statutes is amended by adding a new Part to read:

"Part 11B. Pedestrian Rights and Duties of Persons with a Mobility Impairment.

"*§ 20-175.5. Use of motorized wheelchairs or similar vehicles not exceeding 1000 pounds gross weight.*

While a person with a mobility impairment as defined in G.S. 20-37.5 operates a motorized wheelchair or similar vehicle not exceeding 1000 pounds gross weight in order to provide that person with the mobility of a pedestrian, that person is subject to all the laws, ordinances, regulations, rights and responsibilities which would otherwise apply to a pedestrian, but is not subject to Part 10 of this Article or any other law, ordinance or regulation otherwise applicable to motor vehicles."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 791 **CHAPTER 207**

AN ACT TO ESTABLISH A PILOT PROGRAM OF MEDIATED SETTLEMENT CONFERENCES IN SUPERIOR COURT ACTIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 7A of the General Statutes is amended by adding the following new section to read:

"*§ 7A-38. Court ordered, mediated settlement conferences in superior court civil actions.*

(a) Purpose. This section is enacted in order to provide for a pilot program in judicial districts selected by the Director of the Administrative Office of the Courts in which parties to superior court civil litigation may be required to attend a pretrial settlement conference conducted by a mediator. The purpose of the pilot program is to determine whether a system of mediated settlement conferences may make the operation of the superior courts more efficient, less costly, and more satisfying to the litigants.

(b) Definitions as used in this section:

(1) 'Mediated settlement conference' means a court ordered conference between or among the parties to a civil action and their representatives conducted by a mediator prior to trial.

(2) 'Mediation' means an informal process conducted by a mediator with the objective of helping parties voluntarily reach a mutually acceptable settlement of their dispute.

(3) 'Mediator' means a neutral person who acts to encourage and facilitate a resolution of a pending civil action. A mediator does not render a judgment as to the merit of the action.

(c) Selection of districts. This procedure may be implemented in a judicial district or any part of a judicial district if the Director of the Administrative Office of the Courts and the senior resident superior court judge of that district determine that use of this program may assist in achieving objectives stated in subsection (a) of this section. The Director of the Administrative Office of the Courts may terminate any pilot program after consultation with the senior resident superior court judge.

(d) Rules of mediated settlement conferences. The Supreme Court may adopt rules to implement this section.

(e) Judge to select cases for mediated settlement conferences. The senior resident superior court judge of any district participating, in whole or in part, in any pilot program may order a mediated settlement conference for all or any part of a superior court civil action pending in the pilot area, except as limited by the rules of the Supreme Court adopted under the authority of this section.

(f) Attendance of parties. The parties to a civil action in which a mediated settlement conference is ordered, their attorneys, and other persons having authority to settle the parties' claims shall attend the conference unless excused by rules of the Supreme Court or by order of the senior resident superior court judge.

(g) Selection of mediator. The parties shall have the right to stipulate to a mediator subject to the standards and rules established by the Supreme Court. Upon failure of the parties to agree within the time established by the rules, a mediator shall be appointed by the senior resident superior court judge.

(h) Sanctions. Upon failure of a party or attorney to attend a court ordered mediated settlement conference to the extent required by this section and rules promulgated by the Supreme Court, a resident or presiding judge may impose any lawful sanction, including but not limited to the payment of attorneys fees, mediator fees, and expenses incurred in attending the conference, contempt, or any other sanction authorized by G.S. 1A-1, Rule 37(b).

(i) Standards for mediators. The Supreme Court is authorized to establish standards for the qualification and conduct of mediators and mediator training programs. An administrative fee may be set by the

Administrative Office of the Courts to be charged to applicants for approval as mediators and mediator training programs.

(j) Immunity. A mediator acting pursuant to this section shall have judicial immunity in the same manner and to the same extent as a judge of the General Court of Justice.

(k) Costs of mediated settlement conference. Costs of the mediated settlement conference shall be paid: one share by the plaintiffs, one share by the defendants, and one share by any third-party defendant, unless otherwise ordered by the court or agreed to by the parties. The rules established by the Supreme Court under subsection (d) of this section shall set out a method whereby the parties found by the court to be unable to pay the costs of the mediated settlement conference are afforded an opportunity to participate without cost.

(l) Inadmissability of negotiations. All conduct or communications made during a mediated settlement conference are presumed to be made in compromise negotiations and shall be governed by Rule 408 of the North Carolina Rules of Evidence.

(m) Evaluation. The pilot program authorized by this section shall be evaluated for a reasonable period of time under the direction of the Administrative Office of the Courts. The Director of the Administrative Office of the Courts shall report the results of the evaluation to the General Assembly.

(n) Funding of the pilot program. The Administrative Office of the Courts may solicit funds from private sources to establish, conduct, and evaluate this pilot program. No State funds shall be used to establish, conduct, or evaluate this program.

(o) Report on pilot program. The Administrative Office of the Courts shall file a written report with the General Assembly on the evaluation of the pilot program on or before May 1, 1995. The pilot program shall terminate on June 30, 1995.

(p) Right to jury trial. Nothing in this section or the rules promulgated by the Supreme Court implementing this section shall restrict the right to jury trial."

Sec. 2. This act becomes effective October 1, 1991, and applies to mediated settlement conferences established on and after the Supreme Court's rules are adopted governing this establishment.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 211 **CHAPTER 208**

AN ACT TO ALLOW DEMOLITION OF DWELLINGS UNDER G.S. 160A-443 FOLLOWING AN ORDER OF THE PUBLIC OFFICER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443(5a) reads as rewritten:

"(5a) If the governing body shall have adopted an ~~ordinance~~ ordinance, or the public officer shall have issued an order, ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ~~ordinance.~~ ordinance or order, then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or
b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner

fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 291 **CHAPTER 209**

AN ACT TO AUTHORIZE THE CITY OF CHARLOTTE AND THE TOWN OF MATTHEWS TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED TWENTY-FIVE DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a) as amended by Chapter 1009 of the 1985 Session Laws (Regular Session 1986) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~twenty dollars ($20.00)~~ twenty-five dollars ($25.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar ($1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab. Provided, further that any tax levied in excess of twenty dollars ($20.00) per year per vehicle by the City of Charlotte and any tax levied in excess of five dollars ($5.00) per year per vehicle by the Town of Matthews shall be dedicated to and may only be expended for public transit systems and transit-related activities."

Sec. 2. This act shall apply to the City of Charlotte and the Town of Matthews only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 309 **CHAPTER 210**

AN ACT TO MAKE VARIOUS AMENDMENTS TO CHAPTER 84 OF THE GENERAL STATUTES RELATING TO OUT-OF-STATE ATTORNEYS, PREPAID LEGAL SERVICES, DEPOSITS OF THE STATE BAR, BOARD OF LAW EXAMINERS RECORDS, AND ATTORNEY DISCIPLINE AND DISBARMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 84-23.1 reads as rewritten:

"*§ 84-23.1. Prepaid legal services.*

(a) This section is in addition to and not a limitation of the powers and responsibilities of the council set out in G.S. 84-23. To the extent that this section deals with the same powers and responsibilities it shall be taken to be in amplification of those powers and not in derogation thereof.

~~(b) The council has the responsibility and duty of discipline and regulation of the practice of law in this State. Plans providing for prepaid legal services must be submitted to the council and may not be implemented or operated without the prior and continuing approval by the council as being proper under the statutes, rules and regulations governing the practice of law in this State; provided, however, the council shall not approve any plan for prepaid legal services which in any way restricts the right of the client or person receiving prepaid legal services to select his own attorney from the actual members of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise.~~

(b1) All organizations offering prepaid legal services plans shall register those plans with the North Carolina State Bar Council on forms provided by the Council. Each plan shall be registered prior to its implementation or operation in this State.

~~(c) The council is authorized to initiate and cause the creation of a nonprofit corporation pursuant to Chapter 55A of the General Statutes, for the purpose of providing for prepayment for legal services. The corporation authorized by this section shall have the following powers:~~

~~(1) To provide for the collection of payments for the plan or plans it offers, the payment of legal fees in accordance with its approved plans, and the investment and safeguarding of funds held for such purposes.~~

~~(2) To contract with insurance companies or other companies for actuarial services, administrative and other services, use of facilities, underwriting and reinsurance.~~

~~(3) All other powers necessary and appropriate for the offering of plans for prepaid legal services.~~

~~(4) All other powers granted to nonprofit corporations by law or by virtue of their charters and bylaws.~~

~~The corporation may not directly employ an attorney to perform legal services for another person. It shall not be subject to regulation under Articles 1 through 64 of Chapter 58 of the General Statutes or other provisions relating to insurance companies, but it shall be subject to regulation pursuant to subsection (b) of this section. Neither the existence of this authorization, nor the creation of such a corporation shall limit the authority of the council to approve other plans for prepaid legal services. The council may cause funds of the North Carolina State Bar to be contributed, advanced or loaned to, or used for the benefit of the corporation so created upon such terms as the council deems appropriate, and pursuant to such regulations as the council may promulgate to assure such funds are used for the purposes herein provided.~~

(d) Notwithstanding ~~approval of the council pursuant to subsection (b),~~ registration of the plan with the North Carolina State Bar Council pursuant to subsection (b1), any plan for prepaid legal services ~~other than pursuant to subsection (c)~~ is subject to regulation under ~~Articles 1 through 64 of~~ Chapter 58 of the General Statutes if offered by a company engaged in the insurance business or if the plan itself constitutes the offering of insurance.

~~(e) Notwithstanding any other provision of this section or any other statute or law, no plan providing for prepaid legal services shall be authorized to exist or function in the State of North Carolina which in any way restricts or denies the client or person receiving prepaid legal services the right to select an attorney of his own choice from the active membership of the North Carolina State Bar, or a member of any other state bar in any other state where the claim or cause of action may arise to represent said person or client.~~"

Sec. 2. G.S. 84-4.1 reads as rewritten:

"*§ 84-4.1. Limited practice of out-of-state attorneys.*

Any attorney domiciled in another state, and regularly admitted to practice in the courts of record of ~~another~~ that state and in good standing therein, having been retained as attorney for ~~any party to a legal proceeding, civil or criminal,~~ a party to any civil or criminal legal proceeding pending in the General Court of Justice of North Carolina, or the North Carolina Utilities Commission or the North Carolina Industrial Commission or the Office of Administrative Hearings of North Carolina may, on motion, be admitted to practice in the General Court of Justice or the North Carolina Utilities Commission or the North Carolina Industrial Commission or the

Office of Administrative Hearings of North Carolina for the sole purpose of appearing for ~~his client in said litigation, but only upon compliance with the following conditions precedent:~~ a client in the litigation. The motion required under this section shall contain or be accompanied by:

(1) The attorney's ~~He shall set forth in his motion his~~ full name, post-office address and status as a practicing attorney in ~~such other~~ another state.

(2) ~~He shall attach to his motion a~~ A statement, signed by the client, setting forth the client's address and declaring that the client has retained the attorney to represent the client in the proceeding. ~~his client, in which the client sets forth his post-office address and declares that he has retained the attorney to represent him in such proceeding.~~

(3) ~~He shall attach to his motion a~~ A statement that unless permitted to withdraw sooner by order of the court, ~~he~~ the attorney will continue to represent ~~his~~ the client in ~~such~~ the proceeding until the final determination thereof, and that with reference to all matters incident to ~~such~~ the proceeding, ~~he~~ the attorney agrees ~~that he shall~~ to be subject to the orders and amenable to the disciplinary action and the civil jurisdiction of the General Court of Justice and the North Carolina State Bar in all respects as if ~~he~~ the attorney were a regularly admitted and licensed member of the Bar of North Carolina in good standing.

(4) ~~He shall attach to his motion a~~ A statement ~~to the effect~~ that the state in which ~~he~~ the attorney is regularly admitted to practice grants like privileges to members of the Bar of North Carolina in good standing.

(5) ~~He shall attach to his motion a~~ A statement to the effect that ~~he~~ the attorney has associated and ~~has~~ is personally appearing ~~with him in such proceeding~~ in the proceeding, with an attorney who is a resident of this State and is duly and legally admitted to practice in the General Court of Justice of North Carolina, upon whom service may be had in all matters connected with such legal proceedings, or any disciplinary matter, with the same effect as if personally made on ~~such~~ the foreign attorney within this State.

~~(6)~~ Compliance with the foregoing requirements ~~shall~~ does not deprive the court of the discretionary power to allow or reject the application."

Sec. 3. Chapter 84 of the General Statutes is amended by adding a new section to read:

"*§ 84-34.1. Deposits of the North Carolina State Bar.*

Deposits of the North Carolina State Bar, its boards, agencies, and committees shall be secured as provided in G.S. 159-31(b)."

Sec. 4. G.S. 84-24 reads as rewritten:

"§ *84-24. Admission to practice.*

The provisions of the law now obtaining with reference to admission to the practice of law, as amended, and the rules and regulations prescribed by the Supreme Court of North Carolina with reference thereto, shall continue in force until superseded, changed or modified by or under the provisions of this Article.

For the purpose of examining applicants and providing rules and regulations for admission to the Bar including the issuance of license therefor, there is hereby created the Board of Law Examiners, which shall consist of 11 members of the Bar, elected by the council of the North Carolina State Bar, who need not be members of the council. No teacher in any law school, however, shall be eligible. The members of the Board of Law Examiners elected from the Bar shall each hold office for a term of three years: Provided, that the members first elected shall hold office, two for one year, two for two years, and two for three years.

The Board of Law Examiners shall elect a member of said Board as chairman thereof, and the Board may employ an executive secretary and provide such assistance as may be required to enable said Board to perform its duties promptly and properly. The chairman and any employees shall serve for such period as said Board may determine.

The examination shall be held in such manner and at such times as the Board of Law Examiners may determine.

The Board of Law Examiners shall have full power and authority to make or cause to be made such examinations and investigations as may be deemed by it necessary to satisfy it that the applicants for admission to the Bar possess the qualifications of character and general fitness requisite for an attorney and counselor-at-law and to this end the Board of Law Examiners shall have the power of subpoena and to summons and examine witnesses under oath and to compel their attendance and the production of books, papers and other documents and writings deemed by it to be necessary or material to the inquiry and shall also have authority to employ and provide such assistance as may be required to enable it to perform its duties promptly and properly. Records, papers, and other documents containing information collected and compiled by the Board or its members or employees as a result of investigations, inquiries, or interviews conducted in connection with examinations or licensing matters, are not public records within the meaning of Chapter 132 of the General Statutes.

All applicants for admission to the Bar shall be fingerprinted to determine whether the applicant has a record of criminal conviction in this State or in any other state or jurisdiction. The information obtained as a result of the fingerprinting of an applicant shall be limited to the official use of the Board of Law Examiners in determining the character and general fitness of the applicant.

The Board of Law Examiners, subject to the approval of the council shall by majority vote, from time to time, make, alter and amend such rules and regulations for admission to the Bar as in their judgment shall promote the welfare of the State and the profession: Provided, that any change in the educational requirements for admission to the Bar shall not become effective within two years from the date of the adoption of such change.

All such rules and regulations, and modifications, alterations and amendments thereof, shall be recorded and promulgated as provided in G.S. 84-21 in relation to the certificate of organization and the rules and regulations of the council.

Whenever the council shall order the restoration of license to any person as authorized by G.S. 84-32, it shall be the duty of the Board of Law Examiners to issue a written license to such person, noting thereon that the same is issued in compliance with an order of the council of the North Carolina State Bar, whether the license to practice law was issued by the Board of Law Examiners or the Supreme Court in the first instance.

Appeals from the Board shall be had in accordance with rules or procedures as may be approved by the Supreme Court as may be submitted under G.S. 84-21 or as may be promulgated by the Supreme Court."

Sec. 5. G.S. 84-28 reads as rewritten:

"*§ 84-28. Discipline and disbarment.*

(a) Any attorney admitted to practice law in this State is subject to the disciplinary jurisdiction of the council of the North Carolina State Bar under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(b) The following acts or omissions by a member of the North Carolina State Bar or any attorney admitted for limited practice under G.S. 84-4.1, individually or in concert with any other person or persons, shall constitute misconduct and shall be grounds for discipline whether the act or omission occurred in the course of an attorney-client relationship or otherwise:

(1) Conviction of, or a tender and acceptance of a plea of guilty or no contest to, a criminal offense showing professional unfitness;

(2) The violation of the Rules of Professional Conduct adopted and promulgated by the council of the North Carolina State Bar in effect at the time of the act;

(3) Knowing misrepresentation of any facts or circumstances surrounding any complaint, allegation or charge of misconduct; failure to answer any formal inquiry or complaint issued by or in the name of the North Carolina State Bar in any disciplinary matter; or contempt of the council or any committee of the North Carolina State Bar.

(c) Misconduct by any attorney shall be grounds for:

(1) Disbarment; or

(2) Suspension for a period up to but not exceeding ~~three~~ five years, any portion of which may be stayed ~~for a period not exceeding three years~~ upon reasonable conditions to which the offending attorney consents; or

(3) ~~Public censure~~ Censure -- a censure is a written form of discipline more serious than a reprimand issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct and has caused significant harm or potential significant harm to a client, the administration of justice, the profession or members of the public, but the protection of the public does not require suspension of the attorney's license; or

(4) ~~Private reprimand.~~ Reprimand -- a reprimand is a written form of discipline more serious than an admonition issued in cases in which an attorney has violated one or more provisions of the Rules of Professional Conduct, but the protection of the public does not require a censure. A reprimand is generally reserved for cases in which the attorney's conduct has caused harm or potential harm to a client, the administration of justice, the profession, or members of the public; or

(5) Admonition -- an admonition is a written form of discipline imposed in cases in which an attorney has committed a minor violation of the Rules of Professional Conduct.

Any order disbarring or suspending an attorney may impose reasonable conditions precedent to reinstatement. Any order of the Disciplinary Hearing Commission or the Grievance Committee imposing a censure, reprimand, or admonition may also require the attorney to complete a reasonable amount of continuing legal education in addition to the minimum amount required by the North Carolina Supreme Court.

(d) Any attorney admitted to practice law in this State, who is convicted of or has tendered and has had accepted, a plea of guilty or

no contest to, a criminal offense showing professional unfitness, may be suspended from the practice of law, but this suspension shall not take place pending appeal of the conviction.

(e) Any attorney admitted to practice law in this State who is disciplined in another jurisdiction shall be subject to the same discipline in this State: Provided, that the discipline imposed in the other jurisdiction does not exceed that provided for in subsection (c) above and that the attorney was not deprived of due process in the other jurisdiction.

(f) Upon application by the North Carolina State Bar, misconduct by an attorney admitted to practice in this State may be restrained or enjoined where the necessity for prompt action exists regardless of whether a disciplinary proceeding in the matter of such conduct is pending. Such application shall be filed in the Superior Court of Wake County and shall be governed by the procedure set forth in G.S. 1A-1, Rule 65.

(g) Any member of the North Carolina State Bar may be transferred to disability inactive status for mental incompetence or physical disability interfering with the attorney's ability to competently engage in the practice of law under such rules and procedures as the council shall promulgate as provided in G.S. 84-21.

(h) There shall be an appeal of right from any final order imposing admonition, reprimand, censure, suspension or disbarment upon an attorney, or ~~involuntary~~ involuntarily transferring a member of the North Carolina State Bar to disability inactive status ~~for mental incompetence or physical disability, to the appellate division~~ to the North Carolina Court of Appeals. Review by the appellate division shall be upon matters of law or legal inference. The procedures governing any such appeal shall be as provided by statute or court rule for appeals in civil cases. A final order which imposes disbarment or suspension for 18 months or more shall not be stayed except upon application, under the rules of the Court of Appeals, for a writ of supersedeas. A final order imposing suspension for less than 18 months or any other discipline except disbarment shall be stayed pending determination of the appeal.

(i) The North Carolina State Bar may invoke the process of the General Court of Justice to enforce the powers of the council or any committee to which the council delegates its authority.

(j) The North Carolina State Bar may apply to appropriate courts for orders necessary to protect the interests of clients of missing, disabled, incapacitated or deceased attorneys.

The senior regular resident judge of the superior court of any district wherein a member of the North Carolina State Bar resides or maintains an office shall have the authority and power to enter such

orders as are necessary to protect the interests of such clients, including the authority to order the payment of counsel fees from the estate of the member to any attorney appointed to administer or conserve the law practice of the member."

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 653 **CHAPTER 211**

AN ACT TO CREATE A TAX COMMISSION FOR RANDOLPH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Randolph County Tax Commission. (a) Creation and Membership. The Randolph County Tax Commission is created. It shall consist of three members appointed by the Randolph County Board of County Commissioners. Not more than two members of the Tax Commission shall be affiliated with the same political party and each member must be a citizen of Randolph County. The Tax Commission shall have a Chair. The members of the Tax Commission shall elect the Chair at its first annual meeting and, in the event of a vacancy, shall fill the office of Chair for the unexpired term.

(b) Terms. Each member shall be appointed for a term of three years and shall serve until a successor is appointed. The terms shall expire on the first Monday of the month preceding the first day of the month in which taxes are listed. Of the members initially appointed, one shall serve for a term of one year, one shall serve for a term of two years, and one shall serve for a term of three years. The terms of the initial members shall begin on the first Monday in December, 1991.

(c) Vacancy. A vacancy shall be filled by the Board of County Commissioners at its first regular meeting following the occurrence of the vacancy. A vacancy occurs on the Tax Commission when a member resigns, is removed, or dies. The person appointed to fill a vacancy shall serve for the balance of the unexpired term. The Board may remove a member of the Tax Commission for good cause shown after thirty (30) days notice in writing to the member and an opportunity for the member to be heard at a public session of the Board.

(d) Oath. Each member of the Tax Commission, as a prerequisite to holding office, shall take the oath required by Article VI, § 7 of the North Carolina Constitution with the following sentence

added to it: "That I will not allow my official acts to be influenced by personal friendships or political considerations." The oath must be filed with the clerk of the Board of County Commissioners.

(e) Compensation. The Board of County Commissioners shall set the compensation for the Tax Commission members. The compensation for the members shall be the same, with the possible exception of the Chair, for whom the Board may approve a higher compensation. The Board cannot reduce the compensation of the Tax Commission members except at its first meeting in January of any year.

(f) Meetings. The Tax Commission shall meet in regular session on the first Monday of each month or at other times that the Board of County Commissioners determines are necessary. The Tax Commission shall meet in special session upon the call of the Chair, the Tax Assessor, or the Board. The Tax Commission shall elect a secretary who shall keep minutes of the Tax Commission meetings. Whenever the Tax Commission meets with the Board in a joint session, the secretary to the Board shall serve as secretary and provide a copy of the minutes to the Tax Commission.

(g) Duties. The Tax Commission shall perform all of the duties required by the Machinery Act to be performed by the Board of County Commissioners, as well as other general and special laws relating to property taxation in Randolph County, except for levying taxes, determining tax rates, and appointing the Tax Assessor, the Tax Collector, and members of the Special Board of Equalization and Review for Randolph County. The Tax Commission may also require fidelity bonds of subordinate employees of the Tax Department in such amounts and upon such conditions as the Tax Commission determines. The premium for these bonds shall be paid by the county.

Sec. 2. Severability Clause. If a provision of this act is declared invalid by a court of competent jurisdiction, that declaration shall not affect the remaining provisions of this act.

Sec. 3. Conforming Change. Chapter 543 of the 1947 Session Laws, as amended by Chapter 375 of the 1969 Session Laws, is repealed.

Sec. 4. The term of office for the tax supervisor shall continue until the first Monday in December, 1991.

Sec. 5. This act becomes effective July 1, 1991, and applies only to Randolph County.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 788 **CHAPTER 212**

AN ACT TO PROVIDE FOR OPTIONS FOR CERTAIN BOND REQUIREMENTS OF VARIOUS LICENSEES OF THE DEPARTMENT OF INSURANCE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-21-65(b) reads as rewritten:

"(b) The Commissioner shall issue a surplus lines license to any qualified holder of a current fire and casualty broker's or agent's license, but only when the broker or agent has:

(1) Remitted the fifty dollars ($50.00) annual fee to the Commissioner;

(2) Submitted a completed license application on a form supplied by the Commissioner, and the application has been approved by the Commissioner;

(3) Passed a qualifying examination approved by the Commissioner; except that all holders of a license prior to July 11, 1985 shall be deemed to have passed such an examination; and

(4) Filed with the Commissioner, and maintains during the term of the license, in force and unimpaired a bond in favor of this State in the sum of ten thousand dollars ($10,000), aggregate liability, with corporate sureties approved by the Commissioner. The bond shall be conditioned that the surplus lines licensee will conduct business in accordance with the provisions of this Article and will promptly remit the taxes as provided by law. No bond shall be terminated unless at least 30 days prior written notice is given to the licensee and Commissioner. A person required by this subdivision to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities, which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner."

Sec. 2. G.S. 58-33-30(f) reads as rewritten:

"(f) Brokers.

(1) Bond. Prior to issuance of a license as a broker, the applicant shall file with the Commissioner and thereafter, for as long as the license remains in effect, shall keep in force a bond in favor of the State of North Carolina for the use of aggrieved parties in the sum of not less than fifteen thousand dollars ($15,000), executed by an authorized corporate surety approved by the Commissioner. The aggregate liability of the surety for any and all claims on any such bond shall in no event exceed the sum thereof. The bond shall be conditioned on the accounting by the broker (i) to any person requesting the broker to obtain insurance for moneys or premiums collected in connection therewith, (ii) to any licensed insurer or agent who provides coverage for such person with respect to any such moneys or premiums, and (iii) to any premium finance company or to any association of insurers under any plan or plans for the placement of insurance under the laws of North Carolina which afforded coverage for such person with respect to any such moneys or premiums. No such bond shall be terminated unless at least 30 days' prior written notice thereof is given by the surety to the licensee and the Commissioner. Upon termination of the license for which the bond was in effect, the Commissioner shall notify the surety within 10 business days. A person required by this subdivision to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities, which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner.

(2) Other Requirements. An applicant must hold a valid agent's license at the time of application for the broker's license and throughout the duration of the broker's license. A broker's license shall be issued to cover only those kinds of insurance authorized by his agent's license. Suspension or revocation

of the agent's license shall cause immediate revocation of the broker's license."

Sec. 3. G.S. 58-35-15(a) reads as rewritten:

"(a) Within 60 days after the filing of an application for a license accompanied by payment of the fees for license and examination, the Commissioner shall issue the license or may refuse to issue the license and so advise the applicant. The applicant shall submit with such application any and all information which the Commissioner may require to assist him in determining the financial condition, business integrity, method of operation and protection to the public offered by the person filing such application. The Commissioner may require a bond not to exceed twenty-five thousand dollars ($25,000) on applications and any renewal thereof. Such license to engage in business in accordance with the provisions of this Article at the location specified in the application shall be executed in duplicate by the Commissioner and he shall transmit one copy to the applicant and retain a copy on file. A person required by this subsection to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities, which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner."

Sec. 4. G.S. 58-70-20 reads as rewritten:

"*§ 58-70-20. Bond requirement.*

As a condition precedent to the issuance of any permit under G.S. 58-70-1, any applicant for such permit shall file with the Commissioner of Insurance and shall thereafter maintain in force while licensed a bond in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State. The bond shall be continuous in form and shall remain in full force and effect until all moneys collected have been accounted for, and it shall be expressly stated in the bond that it is for the benefit of any person, firm or corporation for whom such collection agency engages in the collection of accounts. Such bond shall be in the amount of five thousand dollars ($5,000) for the initial permit. The amount of such bond for any renewal permit shall be no less than five thousand dollars ($5,000) nor more than fifty thousand dollars ($50,000), and shall be computed as follows: The total collections paid

directly to the collection agency less commissions earned by the collection agency on those collections for the calendar year ending immediately prior to the date of application, multiplied by one-sixth.

A person required by this section to maintain a bond may, in lieu of that bond, deposit with the Commissioner the equivalent amount in cash, in certificates of deposit issued by banks organized under the laws of the State of North Carolina, or any national bank having its principal office in North Carolina, or securities, which shall be held in accordance with Article 5 of this Chapter. Securities may only be obligations of the United States or of federal agencies listed in G.S. 147-69.1(c)(2) guaranteed by the United States, obligations of the State of North Carolina, or obligations of a city or county of this State. Any proposed deposit of an obligation of a city or county of this State is subject to the prior approval of the Commissioner."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

H.B. 1047 **CHAPTER 213**

AN ACT TO ELIMINATE DOUBLE TAXATION OF ALARM SYSTEMS INSTALLERS LICENSED BY THE ALARM SYSTEMS LICENSING BOARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-102.5(d) reads as rewritten:

"(d) Exemptions.

(1) A person, firm, or corporation required to be licensed under G.S. 105-36.1, 105-37, 105-51.1, 105-62, 105-65.1, 105-74, 105-85, 105-89, or 105-89.1 is not required to procure for the same location the general business license imposed by this section.

(2) The tax levied on the businesses described in subdivisions (5) and (6) of subsection (b) of this section does not apply to fraternal organizations having a national charter, American Legion Posts, posts or other local organizations of other veterans' organizations chartered by Congress or organized and operating on a statewide or nationwide basis, Young Men's Christian Associations, Young Women's Christian Associations, or nonstock, nonprofit charitable recreational corporations, foundations, or centers to which a municipality or county contributes any portion of the operating expense.

(3) The tax levied on the businesses described in subdivision (7) of subsection (b) of this section does not apply to the sale,

through dispensers or otherwise, of milk, milk drinks, dairy products, or newspapers, or to dispensers dispensing merchandise for five cents (5¢) or less.

(4) The tax levied on the businesses described in subdivision (8) of subsection (b) of this section does not apply to machines and devices licensed under G.S. 105-65 or G.S. 105-66.1. An organization obtaining a license under G.S. 14-309.7 is not required to obtain a license under subdivision (8) of subsection (b) of this section, but is subject to subsection (e) of this section as if a State license were required.

(5) A person, firm, or corporation licensed under this section to conduct a business described in subdivision (9) of subsection (b) is not required to procure a license under G.S. 105-89 by reason of being engaged in the business of selling, installing, or servicing motor vehicle radios."

Sec. 2. G.S. 105-51.1 is amended by adding a new subsection to read:

"(c) A person, firm, or corporation required to be licensed under this section is not required to obtain a license under G.S. 105-102.5 for the same location."

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of June, 1991.

S.B. 267 **CHAPTER 214**

AN ACT TO ENHANCE THE EDUCATIONAL REQUIREMENTS FOR CERTIFIED PUBLIC ACCOUNTANTS.

The General Assembly of North Carolina enacts:

Section 1. Effective January 1, 1997, G.S. 93-12(5) reads as rewritten:

"(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed an examination to the satisfaction of the Board, in ~~'accounting theory,' 'accounting practice,'~~ 'accounting,' 'auditing,' 'business law,' and other related subjects.

~~From and after July 1, 1961, any person shall be~~ A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, who is a citizen of the United States or has declared his intention of becoming a citizen or is a resident alien, and has been domiciled in or

resided for at least four months within the State of North Carolina immediately prior to the filing of an application to take the examination or to receive a certificate of qualification, is 18 years of age or over, and is of good moral character, and submits evidence satisfactory to the Board that:

a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and
b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting. ~~accounting, and~~
~~c. Satisfactory evidence of the completion of two years in an accredited college or university or its equivalent with a concentration in accounting as defined by the Board and two years experience in the practice of public accountancy under the direct supervision of a certified public accountant, in addition to other experience requirements in this section, may be substituted for a bachelor's degree.~~

Provided, however, the Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test his educational qualifications that he is as well ~~equipped, educationally,~~ qualified as if he met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

Such applicant, in addition to passing the examination given by the Board, shall have the endorsement as to his eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either:

a. Two years experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or

territory of the United States or the District of Columbia, or

b. Five years experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution; or

c. Five years experience in the field of accounting; or five years experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations; or

d. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such person shall have had the required experience."

Sec. 2. Effective January 1, 2001, G.S. 93-12(5), as amended by Section 1 of this act, reads as rewritten:

"(5) To issue certificates of qualification admitting to practice as certified public accountants, each applicant who, having the qualifications herein specified, shall have passed an examination to the satisfaction of the Board, in 'accounting,' 'auditing,' 'business law,' and other related subjects.

A person is eligible to take the examination given by the Board, or to receive a certificate of qualification to practice as a certified public accountant, who is a citizen of the United States or has declared his intention of becoming a citizen or is a resident alien, and has been domiciled in or resided for at least four months within the State of North Carolina immediately prior to the filing of an application to take the examination or to receive a certificate of qualification, is 18 years of age or over, and is of good moral character, and submits evidence satisfactory to the Board that:

~~a. He holds a bachelor's degree from a college or university accredited by one of the regional accrediting~~

~~associations or from a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and~~

a1. The candidate has completed a total of 150 college semester hours, or, has completed a minimum of 120 college semester hours with a concentration in accounting, which include a bachelor's degree at a college or university determined by the Board to have standards substantially equivalent to a regionally accredited institution, and

~~b. His degree studies included a concentration in accounting as defined by the Board or that he supplemented his degree studies with courses that the Board determines to be substantially equivalent to a concentration in accounting.~~

b1. The candidate's total postsecondary school education included a concentration in accounting, as defined by the Board, or degree studies were supplemented with courses determined by the Board to be substantially equivalent to a concentration in accounting.

Provided, however, the Board may, in its discretion, waive the education requirement of any candidate if the Board is satisfied from the result of a special written examination given the candidate by the Board to test his educational qualifications that he is as well qualified as if he met the education requirements specified above. The Board may provide by regulation for the general scope of such examinations and may obtain such advice and assistance as it deems appropriate to assist it in preparing, administering and grading such special examinations.

Such applicant, in addition to passing the examination given by the Board, shall have the endorsement as to his eligibility of three certified public accountants who currently hold licenses in any state or territory of the United States or the District of Columbia and shall have had either:

a. Two years experience in the field of accounting under the direct supervision of a certified public accountant who currently holds a valid license in any state or territory of the United States or the District of Columbia, or

b. Five years experience teaching accounting in a four-year college or university accredited by one of the regional accrediting associations or in a college or

university determined by the Board to have standards substantially equivalent to a regionally accredited institution; or

c. Five years experience in the field of accounting; or five years experience teaching college transfer accounting courses at a community college or technical institute accredited by one of the regional accrediting associations; or

d. Any combination of such experience determined by the Board to be substantially equivalent to the foregoing.

A Master's or more advanced degree in accounting, tax law, economics, business administration, or the equivalent thereof, or a law degree with emphasis in taxation or accounting from an accredited college or university may be substituted for one year of experience. The Board may permit persons otherwise eligible to take its examinations and withhold certificates until such person shall have had the required experience."

Sec. 3. Section 1 of this act becomes effective January 1, 1997. Section 2 of this act becomes effective January 1, 2001. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 293 **CHAPTER 215**

AN ACT TO ALLOW AREA AUTHORITIES TO PROVIDE SERVICES UNDER CONTRACT TO CERTAIN ENTITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-117 is amended by adding a new subsection to read:

"(a1) The area authority may contract to provide services to governmental or private entities, including Employee Assistance Programs."

Sec. 2. G.S. 122C-146 reads as rewritten:

"*§ 122C-146. Fee for service.*

The area authority and its contractual agencies shall prepare fee schedules for services and shall make every reasonable effort to collect appropriate reimbursement for costs in providing these services from individuals or entities able to pay, including insurance and third-party payment, except that individuals may not be charged for services involving multidisciplinary evaluations, intervention plan development, and case management services provided to eligible infants and toddlers

and their families. This exemption from charges does not exempt insurors or other third-party payors from being charged for payment for these services. However, no individual may be refused services because of an inability to pay. All funds collected from fees from area authority operated services shall be used for the fiscal operation or capital improvements of the area authority's programs. The collection of fees by an area authority may not be used as justification for reduction or replacement of the budgeted commitment of local tax revenue."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 294 **CHAPTER 216**

AN ACT ADOPTING THE ADULT SUBSTANCE ABUSE TREATMENT PLAN.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly adopts the Adult Substance Abuse Treatment Plan as approved by the Mental Health Study Commission in December 1990. This adoption by the General Assembly is solely for the purpose of providing policy guidance for the development of services.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 415 **CHAPTER 217**

AN ACT TO AUTHORIZE THE PAROLE COMMISSION TO PAROLE CERTAIN MISDEMEANANTS BUT CONTINUE TO SUPERVISE THEM FOR A PERIOD TO BE DETERMINED BY THE COMMISSION, TO GIVE PAROLE VIOLATORS CREDIT FOR TIME SPENT SUCCESSFULLY IN THE COMMUNITY ON PAROLE, TO MAKE COMMUNITY SERVICE PAROLE FLEXIBLE BY ALLOWING THE PAROLE COMMISSION TO DETERMINE THE AMOUNT OF SERVICE AND TIME PERIOD FOR SERVICE, AND TO EXTEND THE PRISON POPULATION STABILIZATION ACT .

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1372(d) reads as rewritten:

"(d) Parole and Terminate. -- The Parole Commission is authorized simultaneously to parole and terminate supervision of a prisoner when such prisoner has less than 180 days remaining on his maximum sentence, and when the Commission finds that such action will not be incompatible with the public interest. When the Parole Commission finds that such action will not be incompatible with the public interest, the Commission is also authorized:

(1) Simultaneously to parole and terminate supervision of a prisoner; ~~or~~

(2) To parole a prisoner on the condition that he be placed under house arrest; or

(3) To parole a prisoner but continue to supervise the prisoner for a period to be determined by the Commission;

when the prisoner is imprisoned only for a misdemeanor, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 2. G.S. 15A-1373(d) reads as rewritten:

"(d) Effect of Violation. -- If the parolee violates a condition at any time prior to the expiration or termination of the period, the Commission may continue him on the existing parole, with or without modifying the conditions, or, if continuation or modification is not appropriate, may revoke the parole as provided in G.S. 15A-1376 and reimprison the parolee for a term consistent with the following requirements:

(1) ~~The recommitment must be for the unserved portion of the maximum term of imprisonment imposed by the court under G.S. 15A-1351.~~ The time the parolee was at liberty on parole and in compliance with all terms and conditions of that parole shall be credited on a day-for-day basis against the maximum term of imprisonment imposed by the court under G.S. 15A-1351, except that the parolee shall receive no credit for the last six months of his parole.

(2) The prisoner must be given credit against the term of reimprisonment for all time spent in custody as a result of revocation proceedings under G.S. 15A-1376."

Sec. 3. G.S. 15A-1371(h) reads as rewritten:

"(h) Community Service Parole. -- Notwithstanding the provisions of any other subsection herein, certain prisoners specified herein shall be eligible for community service parole, in the discretion of the Parole Commission.

Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. A parolee who is paroled under this subsection must perform as a condition of parole ~~32 hours of~~

community service in an amount and over a period of time to be determined by the Parole Commission. However, the total amount of community service shall not exceed an amount equal to 32 hours for each month of active service remaining in ~~for every month of his remaining active sentence, until at least~~ his minimum sentence (if he was sentenced prior to July 1, 1981), or 32 hours for each month of active service in one-half of his sentence imposed under ~~G.S. 15A-1340.4~~ G.S. 15A-1340.4. ~~has been completed by such community service, at which time parole may be terminated.~~ The Parole Commission may grant early parole under this section without requiring the performance of community service if it determines that such performance is inappropriate to a particular case.

The probation/parole officer and the community service coordinator shall develop a program of community service for the parolee. ~~The parolee must as a condition of parole complete at least 32 hours of community service per 30-day period.~~ The community service coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by a community service coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving an active sentence the term of which exceeds six months; and

(2) Who, in the opinion of the Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence (if he was sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under G.S. 15A-1340.4.

No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense shall be eligible for community service parole.

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

Sec. 4. G.S. 15A-1380.2(h) reads as rewritten:

"(h) Community Service Parole. -- Notwithstanding the provisions of any other subsection herein, certain prisoners specified herein shall

be eligible for community service parole, in the discretion of the Parole Commission.

Community service parole is early parole for the purpose of participation in a program of community service under the supervision of a probation/parole officer. A parolee who is paroled under this subsection must perform as a condition of parole ~~32 hours of~~ community service in an amount and over a period of time to be determined by the Parole Commission. However, the total amount of community service shall not exceed an amount equal to 32 hours for each month of active service remaining in ~~for every month of his remaining active sentence, until at least~~ his minimum sentence (if he was sentenced prior to July 1, 1981), or 32 hours for each month of active service in one-half of his sentence imposed under ~~G.S. 15A-1340.4~~ G.S. 15A-1340.4. ~~has been completed by such community service, at which time parole may be terminated.~~

The probation/parole officer and the community service coordinator shall develop a program of community service for the parolee. ~~The parolee must as a condition of parole complete at least 32 hours of community service per 30-day period.~~ The community service coordinator shall report any willful failure to perform community service work to the probation/parole officer. Parole may be revoked for any parolee who willfully fails to perform community service work as directed by a community service coordinator. The provisions of G.S. 15A-1376 shall apply to this violation of a condition of parole.

Community service parole eligibility shall be available to a prisoner:

(1) Who is serving an active sentence the term of which exceeds six months; and

(2) Who, in the opinion of the Parole Commission, is unlikely to engage in further criminal conduct; and

(3) Who agrees to complete service of his sentence as herein specified; and

(4) Who has served one-half of his minimum sentence (if he was sentenced prior to July 1, 1981), or one-fourth of a sentence imposed under G.S. 15A-1340.4.

No prisoner convicted under Article 7A of Chapter 14 of a sex offense, under G.S. 14-39, 14-41, or 14-43.3, or under G.S. 90-95(h) of a drug trafficking offense shall be eligible for community service parole.

In computing the service requirements of subdivision (4) of this subsection, credit shall be given for good time and gain time credit earned pursuant to G.S. 148-13. Nothing herein is intended to create or shall be construed to create a right or entitlement to community service parole in any prisoner."

Sec. 5. Section 1 of this act shall apply to prisoners currently serving active sentences. Section 2 of this act shall apply to parole violations committed on or after the effective date of this act. Sections 3 and 4 of this act shall apply to prisoners currently serving active sentences or currently on parole.

Sec. 6. Section 6 of Chapter 7 of the 1987 Session Laws, as amended by Section 2 of Chapter 1 of the 1989 Session Laws, reads as rewritten:

"Sec. 6. ~~Sections 1, 2, and 3 of this act shall expire July 1, 1991, unless reenacted by the General Assembly.~~ The Joint Legislative Commission on Governmental Operations, or other Committee designated by the Speaker of the House of Representatives and the Lieutenant Governor, shall monitor the implementation of this act. The Secretary of Correction and the Chairman of the Parole Commission shall make a written report to the Governor, the Joint Legislative Commission on Governmental Operations, and the Fiscal Research ~~Division,~~ Division ~~and the Special Committee on Prisons~~ at least one month prior to the ~~1991 Session of the General Assembly.~~ 1992 Regular Session of the 1991 General Assembly."

Sec. 7. Section 9 of Chapter 1 of the 1989 Session Laws reads as rewritten:

"Sec. 9. This act is effective upon ratification. ~~ratification, but Section 1 of this act shall expire July 1, 1991, unless reenacted by the General Assembly.~~"

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 538 **CHAPTER 218**

AN ACT CONCERNING THE JOHNSTON COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Effective upon ratification of this act, the Johnston County Board of Education is expanded from five to seven members. The two vacancies created by this act shall be filled by appointment of the Johnston County Board of Education, and the persons so appointed shall serve until the first Monday in December of 1992. The appointments shall be made no later than September 30, 1991. Any vacancies in such appointments shall be filled by the Board of Education for the remainder of the unexpired term.

Sec. 2. In 1992, four members of the Johnston County Board of Education shall be elected. The three persons receiving the highest

numbers of votes shall be elected to four-year terms, and the person receiving the fourth highest number of votes shall be elected to a two-year term. In 1994 and quadrennially thereafter, three members of the Johnston County Board of Education shall be elected for four-year terms. In 1996 and quadrennially thereafter, four members of the Johnston County Board of Education shall be elected for four-year terms.

Sec. 3. The Johnston County Board of Education shall continue to be elected on a partisan basis, with all members nominated and elected by the qualified voters of the entire county. The filing period and primary and election dates shall be the same as for county officers generally as provided by Chapter 163 of the General Statutes.

Sec. 4. Except as provided by this act, the provisions of Chapter 261, Session Laws of 1969, in effect on ratification of this act shall continue to apply to the Johnston County Board of Education.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 745 **CHAPTER 219**

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW PERTAINING TO THE REMOVAL OF DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-14(10) reads as rewritten:

"(10) Any employee disqualified for the duration of his unemployment due to the provisions of (1), (2), (2B), (3), (4), or (6A) above may have that permanent disqualification removed if he meets the following three conditions:

a. Returns to work for at least five weeks and is paid cumulative wages of at least 10 times his weekly benefit amount;

b. Subsequently becomes unemployed through no fault of his own; and

c. Meets the availability requirements of the law.

Any disqualification imposed by the provisions of subsection (2A) may be removed as provided by this subsection.

Provided for good cause shown the Commission in its discretion may as to any permanent disqualification provided in this Chapter reduce the disqualification period

to a time certain but not less than five weeks. For purposes of this subdivision good cause shall include a claimant's leaving work in order to accompany the claimant's spouse to a new place of residence where that spouse has secured work in a location which is too far removed for the claimant to continue his or her work. The maximum amount of benefits due any individual whose permanent disqualification is changed to a time certain shall be reduced by an amount determined by multiplying the number of weeks of disqualification by the weekly benefit amount.

Provided further, any permanent disqualification pursuant to the provisions of (1), (2), (3), (4), or (6A) shall terminate two years after the effective date of the beginning of said disqualification."

Sec. 2. This act is effective upon ratification and applies to claims filed on or after that date.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 822 **CHAPTER 220**

AN ACT TO APPOINT A STUDENT MEMBER TO THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA AND TO ESTABLISH A NEW CATEGORY OF MEMBERS EMERITUS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by adding a new section to read:

"*§ 116-6.1. Student member of the Board of Governors.*

(a) Commencing July 1, 1991, and during his continuance as a student in good standing at a constituent institution of The University of North Carolina, the person serving as president of the University of North Carolina Association of Student Governments (UNCASG) or his designee shall serve ex officio as a member of the Board of Governors. This student member shall be in addition to the 32 members elected to the Board of Governors.

(b) The student member shall have all the rights and privileges of membership, except that he shall not have a vote."

Sec. 2. G.S. 116-6(f) is amended as follows:

"(f). Any person who has served at least one full term as chairman of the Board of Governors shall be a member emeritus of the Board of

Governors for one four-year term beginning at the expiration of that member's regular elected term. Any person already serving as an emeritus member may serve an additional four-year term beginning July 1, 1991. Members emeriti have all the rights and privileges of membership except they do not have a vote."

Sec. 3. G.S. 116-6 is amended by adding a new subsection to read:

"(g) Effective July 1, 1991, and thereafter, any person who has served at least one term as a member of the Board of Governors after having served as Governor of North Carolina shall be a member emeritus of the Board of Governors, with all the rights and privileges of membership as in G.S. 116-6(f)."

Sec. 4. Section 2 of this act shall be implemented within funds available for the operations of the Board of Governors of The University of North Carolina. Nothing in Section 2 of this act shall be construed to obligate the General Assembly to appropriate additional funds for the operating costs of the Board of Governors.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 11 **CHAPTER 221**

AN ACT TO APPLY THE TIRE TAX, USED TO PAY FOR THE DISPOSAL OF SCRAP TIRES, TO NEW TIRES FOR ROAD CONSTRUCTION EQUIPMENT AND OTHER NEW VEHICLE TIRES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 105 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5B.

"Scrap Tire Disposal Tax.

"*§ 105-187.15. Definitions.*

The definitions in G.S. 105-164.3 apply to this Article, except that the term 'sale' does not include lease or rental, and the following definitions apply to this Article:

(1) Scrap tire. A tire that is no longer suitable for its original, intended purpose because of wear, damage, or defect.

(2) Tire. A continuous solid or pneumatic rubber covering encircling a wheel.

"*§ 105-187.16. Tax imposed.*

A privilege tax is imposed on a tire retailer at the rate of one percent (1%) of the sales price of each new tire sold at retail by the

retailer. A privilege tax is imposed on a tire retailer and on a tire wholesale merchant at the rate of one percent (1%) of the sales price of each new tire sold by the retailer or wholesale merchant to a wholesale merchant or retailer for placement on a vehicle offered for sale, lease, or rental by the retailer or wholesale merchant. An excise tax is imposed on a new tire purchased for storage, use, or consumption in this State or for placement in this State on a vehicle offered for sale, lease, or rental. This excise tax is at the rate of one percent (1%) of the cost price of the tire. These taxes are in addition to all other taxes.

"§ *105-187.17. Administration.*

The privilege tax this Article imposes on a tire retailer who sells new tires at retail is an additional State sales tax and the excise tax this Article imposes on the storage, use, or consumption of a new tire in this State is an additional State use tax. Except as otherwise provided in this Article, these taxes shall be collected and administered in the same manner as the State sales and use taxes imposed by Article 5 of this Chapter. As under Article 5 of this Chapter, the additional State sales tax paid when a new tire is sold is a credit against the additional State use tax imposed on the storage, use, or consumption of the same tire.

The privilege tax this Article imposes on a tire retailer and on a tire wholesale merchant who sell new tires for placement in this State on a vehicle offered for sale, lease, or rental is a tax on the wholesale sale of the tires. This tax and the excise tax this Article imposes on a new tire purchased for placement in this State on a vehicle offered for sale, lease, or rental shall, to the extent practical, be collected and administered as if they were additional State sales and use taxes. The privilege tax paid when a new tire is sold for placement on a vehicle offered for sale, lease, or rental is a credit against the use tax imposed on the purchase of the same tire for placement in this State on a vehicle offered for sale, lease, or rental.

"§ *105-187.18. Exemptions.*

The taxes imposed by this Article do not apply to:

(1) Bicycle tires and other tires for vehicles propelled by human power.

(2) Recapped tires.

The exemptions in G.S. 105-164.13 and the refunds allowed in G.S. 105-164.14 do not apply to the taxes imposed by this Article.

"§ *105-187.19. Use of tax proceeds.*

The Secretary shall distribute the taxes collected under this Article, less the cost of collecting the taxes, in accordance with this section. The Secretary shall retain the cost of collection as reimbursement to the Department of Revenue.

Each quarter, the Secretary shall credit ten percent (10%) of the net tax proceeds to the Solid Waste Management Trust Fund and shall distribute ninety percent (90%) of the net tax proceeds among the counties on a per capita basis according to the most recent annual population estimates certified to the Secretary by the Office of State Budget and Management. A county may use funds distributed to it under this section only as provided in G.S. 130A-309.54."

Sec. 2. G.S. 130A-309.53(7) reads as rewritten:

"(7) 'Tire' means a continuous solid or pneumatic rubber covering ~~encircling~~ that encircles the wheel of a ~~motor~~ vehicle ~~as defined in G.S. 20-4.01(23).~~ and is subject to the tax imposed by Article 5B of Chapter 105."

Sec. 3. G.S. 130A-309.54 reads as rewritten:

"§ *130A-309.54.* ~~*Scrap tire disposal fee.*~~ *Use of scrap tire tax proceeds.*

~~(a) A fee is imposed on the privilege of selling or using new motor vehicle tires in this State. This fee is in addition to all other taxes and fees imposed.~~

~~(b) The definitions in G.S. 105-164.3 apply to G.S. 130A-309.55 and G.S. 130A-309.56, except the term "sale" does not include a lease or rental.~~

~~(c) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be used by each~~ Article 5B of Chapter 105 imposes a tax on new tires to provide funds for the disposal of scrap tires. A county may use proceeds of the tax distributed to it under that Article only for the disposal of scrap tires pursuant to the provisions of this Part or for the abatement of a nuisance pursuant to G.S. 130A-309.60.

~~(d) The fees imposed by G.S. 130A-55 and G.S. 130A-56 shall be administered in the same manner as the tax imposed by Article 5 of Chapter 105 of the General Statutes. All other provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes shall apply to this Part to the extent they are not inconsistent with the provisions of this Part. However, the exemptions and exclusions under G.S. 105-164.13 and G.S. 105-164.3(19) and the lower rates of tax imposed have no effect on the scrap tire disposal fee. The refund provisions under G.S. 105-164.14(a), (b), and (c) do not apply. The Secretary of Revenue may administer, enforce, collect and distribute the scrap tire disposal fee. The administrative interpretation made by the Secretary of Revenue with respect to the North Carolina Sales and Use Tax Act applies to the scrap tire disposal fee to the extent they are not inconsistent.~~"

Sec. 4. G.S. 130A-309.55 and G.S. 130A-309.56 are repealed.

Sec. 5. G.S. 130A-309.58(e) reads as rewritten:

"(e) A county shall provide, directly or by contract with another unit of local government or private entity, at least one site for scrap

tire disposal for that county. The unit of local government or contracting party may charge a disposal fee for the disposal of ~~in-county~~ scrap tires ~~and such disposal fees shall be assessed~~ only to the extent that the cost per tire of disposal exceeds the ~~scrap tire disposal fees~~ amount received by the county under G.S. 105-187.19 during the preceding 12-month period, divided by the number of tires disposed of within the county according to the tire disposal procedures during that period. The unit of local government or contracting party may charge a disposal fee for the disposal of scrap tires ~~from tire manufacturers, retreaders not engaged in the retail sale of new tires, and any others subject to the scrap tire disposal fee, regardless of where such scrap tires originated, and such fees shall not exceed the cost of disposal for such tires. The unit of local government or contracting party also may charge a disposal fee for the disposal of out-of-county and out-of-State scrap tires at the county's site,~~ regardless of whether a tax has been paid on the tire under Article 5B of Chapter 105 and regardless of the tire's place of origin."

Sec. 6. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 75 **CHAPTER 222**

AN ACT REQUIRING THAT THE NORTH CAROLINA MEDICAL CARE COMMISSION AND THE SOCIAL SERVICES COMMISSION DRAFT RULES CONTAINING STATE STANDARDS FOR SPECIAL CARE UNITS IN NURSING HOMES AND REST HOMES FOR ALZHEIMER'S AND RELATED DEMENTIA PATIENTS AND THAT THESE COMMISSIONS MAKE A REPORT TO THE STUDY COMMISSION ON AGING.

Whereas, there are approximately 60,000 men and women in North Carolina who are victims of Alzheimer's disease and related dementia; and

Whereas, many of these people, who require specialized care, are being placed in nursing homes and rest homes where there is no specialized care for Alzheimer's and related dementia patients; and

Whereas, there are no State standards governing the care of Alzheimer's and related dementia patients in nursing homes and rest homes; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. As used in this act, the term "special care unit" means a wing or hallway within a nursing home or rest home that is separated by closed doors from the rest of the nursing home or rest home and that is designed especially for residents with Alzheimer's disease and related dementia.

Sec. 2. The North Carolina Medical Care Commission shall develop rules containing State standards for special care units in nursing homes for patients with Alzheimer's disease and related dementia. These standards shall include guidelines concerning the type of care provided in a special care unit, the type of resident who can be served on the unit, the ratio of residents to staff members, and the requirements for the training of staff members. The Commission shall make a report, which shall include these standards, to the North Carolina Study Commission on Aging, established by Article 21 of Chapter 120 of the General Statutes, by October 1, 1991.

Sec. 3. The Social Services Commission shall develop rules containing State standards for special care units in rest homes for patients with Alzheimer's disease and related dementia. These standards shall include guidelines concerning the type of care provided in a special care unit, the type of resident who can be served on the unit, the ratio of residents to staff members, and the requirements for the training of staff members. The Commission shall make a report, which shall include these proposed standards, to the North Carolina Study Commission on Aging, established by Article 21 of Chapter 120 of the General Statutes, by October 1, 1991.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 82 **CHAPTER 223**

AN ACT TO AMEND THE BEDDING SANITATION LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-261(1) reads as rewritten:

"(1) 'Bedding' means any mattress, upholstered spring, sleeping bag, pad, comforter, cushion, pillow, decorative pillow, and any other padded or stuffed item designed to be or commonly used ~~principally~~ for reclining or sleeping. ~~This definition includes only those items which have a thickness of more than one inch.~~ This definition ~~also~~ includes dual purpose furniture such as studio couches and sofa beds. The term 'mattress' does not include water bed liners, bladders or cylinders ~~but does include padding or~~

~~cushioning material which has a thickness of more than one inch.~~ unless they contain padding or stuffing."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 186 **CHAPTER 224**

AN ACT TO PROVIDE THAT CERTAIN DESIGNATED STATE PUBLICATIONS BE PRINTED ON ALKALINE PAPER.

The General Assembly of North Carolina enacts:

Section 1. Article 1A of Chapter 125 of the General Statutes is amended by adding a new section to read:

"*§ 125-11.13. Alkaline paper required for government publications.*

(a) State publications that are of historical or enduring value and importance to the citizens of North Carolina shall be printed on alkaline (acid-free) paper. These publications shall be designated on an annual basis by the State Librarian and the University Librarian at the University of North Carolina at Chapel Hill and shall include publications of an historical, biographical, legal, or statistical nature relating to the State of North Carolina, past, present, or future. These publications shall identify thereon, adjacent to the name of the agency responsible for publication, a statement that the publication is printed on permanent paper.

(b) By November 1 of each year, the State Librarian and the University Librarian at the University of North Carolina at Chapel Hill shall designate the titles for publication on alkaline paper and shall notify each State agency that is responsible for the publication of a designated title. An agency so notified shall begin printing the designated title on alkaline paper within one year after receipt of the notification or at the awarding of the contract for the publication, whichever event occurs first. The Coordinator of the North Carolina State Publications Clearinghouse shall monitor compliance with this requirement and shall transmit a copy of the compliance report to the State Librarian and to the University Librarian at the University of North Carolina at Chapel Hill by October 1 of each year.

(c) The State Librarian and the University Librarian at the University of North Carolina at Chapel Hill shall report by November 1 of each year to the Joint Legislative Commission on Governmental Operations regarding the titles designated for printing on alkaline paper and shall include in the report the compliance report received from the Coordinator of the North Carolina State Publications Clearinghouse."

Sec. 2. Article 13 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-170.5. Designated public documents to be printed on alkaline paper.*

The State Librarian and the University Librarian at the University of North Carolina at Chapel Hill shall designate annually as provided by G.S. 125-11.12 those State documents that must be printed on alkaline paper. Each agency publishing a State document designated by the State Librarian and the University Librarian at the University of North Carolina at Chapel Hill as one that must be printed on alkaline paper shall comply with that publication requirement."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 218 **CHAPTER 225**

AN ACT TO SIMPLIFY THE COMMUNICABLE DISEASE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-144(e) reads as rewritten:

"(e) The local health director shall ensure that control measures prescribed by the Commission have been given to prevent the spread of all reportable communicable diseases or communicable conditions and any other communicable disease or communicable condition that represents a significant threat to the public health. The local health department shall provide, at no cost to the patient, the examination and treatment for tuberculosis disease and infection and for sexually transmitted diseases designated by the Commission."

Sec. 2. G.S. 130A-160 through G.S. 130A-178 are repealed.

Sec. 3. This act becomes effective February 1, 1992.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 219 **CHAPTER 226**

AN ACT TO REQUIRE A NEW PERMIT FOR RE-OPENED FOOD AND LODGING ESTABLISHMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-248 reads as rewritten:

"*§ 130A-248. Regulation of restaurants and hotels.*

(a) For the protection of the public health, the Commission shall adopt rules governing the sanitation of restaurants, school cafeterias,

summer camps, food or drink stands, sandwich manufacturing operations, mobile food units, pushcarts and other facilities where food or drink is prepared or served for pay. However, any facility where food or drink is prepared or served to the public, regardless of pay, shall be subject to the provisions of this Article if the facility holds an ABC permit, meets the definition of an establishment pursuant to G.S. 18B-1000(2), (4), (5), or (6) and does not meet the definition of a private club as provided in G.S. 130A-247(2).

(a1) For the protection of the public health, the Commission shall adopt rules governing the sanitation of hotels, motels, tourist homes, and other facilities where lodging is provided for pay.

(a2) For the protection of the public health, the Commission shall adopt rules governing the sanitation of private homes offering bed and breakfast accommodations to eight or less persons per night.

(a3) The rules adopted by the Commission pursuant to subsections (a), (a1), and (a2) of this section shall address, but not be limited to, the following:

(1) Establishment of sanitation requirements for cleanliness of floors, walls, ceilings, storage spaces, utensils, and other areas and items;

(2) The adequacy of:
   a. Lighting, ventilation, and water supply;
   b. Sewage collection, treatment, and disposal facilities; and
   c. Lavatory facilities, food protection facilities, and waste disposal;

(3) The cleaning and bactericidal treatment of eating and drinking utensils and other food-contact surfaces;

(3a) The appropriate and reasonable use of gloves or utensils by employees who handle unwrapped food;

(4) The methods of food preparation, transportation, catering, storage, and serving;

(5) The health of employees; and

(6) Animal and vermin control.

The rules shall contain a system for grading facilities, such as Grade A, Grade B, and Grade C.

(b) No facility shall commence or continue operation ~~that does not have~~ without a permit or transitional permit issued by the Department. The permit or transitional permit shall be issued to the owner or operator of the facility and shall not be transferable. A permit shall be issued only when the facility satisfies all of the requirements of the rules. The Commission shall adopt rules establishing the requirements that must be met before a transitional permit may be issued, and the period for which a transitional permit may be issued. The Department may also impose conditions on the issuance of a permit or transitional

permit in accordance with rules adopted by the Commission. A permit or transitional permit shall be immediately revoked in accordance with G.S. 130A-23(d) for failure of the facility to maintain a minimum grade of C. A permit or transitional permit may otherwise be suspended or revoked in accordance with G.S. 130A-23.

(b1) A permit shall expire one year after a facility closes unless the permit is the subject of a contested case pursuant to Article 3 of Chapter 150B.

(c) If ownership of a facility is transferred, the new owner or operator shall apply for a new permit. The new owner or operator may also apply for a transitional permit. A transitional permit may be issued upon the transfer of ownership of an establishment to allow the correction of construction and equipment problems that do not represent an immediate threat to the public health.

(d) *(Expires June 30, 1992)* The Department shall charge each facility subject to this section, except public school cafeterias, an annual fee of twenty-five dollars ($25.00). The Department shall charge an additional twenty-five dollar ($25.00) late payment fee to any facility that fails to pay the required fee within 45 days after billing by the Department. The Department may, in accordance with G.S. 130A-23, suspend or revoke the permit of a facility that fails to pay the required fee within 60 days after billing by the Department. The Commission shall adopt rules to implement this subsection. Fees collected under this subsection shall be credited to the General Fund and may be used to support State and local public health programs and activities. The Department shall make an annual report to the Joint Legislative Commission on Governmental Operations and the Director of the Fiscal Research Division that shall include the fees collected and disbursed under this subsection and any other information requested by the General Assembly or the Commission."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 424 **CHAPTER 227**

AN ACT TO AUTHORIZE A FEE FOR COMPANION ANIMAL CERTIFICATES OF EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-5 reads as rewritten:

"§ *130A-5. Duties of the Secretary.*

The Secretary shall have the authority:

(1) To enforce the State health laws and the rules of the Commission;

(2) To investigate the causes of epidemics and of infectious, communicable and other diseases affecting the public health in order to control and prevent these diseases; to provide, under the rules of the Commission, for the prevention, detection, reporting and control of communicable, infectious or any other diseases or health hazards considered harmful to the public health to obtain, notwithstanding the provisions of G.S. 8-53, a copy or a summary of pertinent portions of privileged patient medical records deemed necessary by joint agreement of the attending physician and a Department physician for investigating a disease or health hazard that may present a clear danger to the public health. Any physician providing copies or summaries of privileged patient medical records pursuant to this subdivision shall be immune from civil or criminal liability that might otherwise be incurred or imposed based upon invasion or privacy or breach of physician-patient confidentiality arising out of the furnishing of or agreement to furnish such records;

(3) To develop and carry out reasonable health programs that may be necessary for the protection and promotion of the public health and the control of diseases. The Commission is authorized to adopt rules to carry out these programs;

(4) To make sanitary and health investigations and inspections;

(5) To investigate occupational health hazards and occupational diseases and to make recommendations for the elimination of the hazards and diseases. The Secretary shall work with the Industrial Commission and shall file sufficient reports with the Industrial Commission to enable it to carry out all of the provisions of the Workers' Compensation Act with respect to occupational disease.

(6) To receive donations of money, securities, equipment, supplies, realty or any other property of any kind or description which shall be used by the Department for the purpose of carrying out its public health programs;

(7) To acquire by purchase, devise or otherwise in the name of the Department equipment, supplies and other property, real or personal, necessary to carry out the public health programs;

(8) To use the official seal of the Department. Copies of documents in the possession of the Department may be authenticated with the seal of the Department, attested by

the signature or a facsimile of the signature of the Secretary, and when authenticated shall have the same evidentiary value as the originals;

(9) To disseminate information to the general public on all matters pertaining to public health; to purchase, print, publish, and distribute free, or at cost, documents, reports, bulletins and health informational materials. Money collected from the distribution of these materials shall remain in the Department to be used to replace the materials;

(10) To be the health advisor of the State and to advise State officials in regard to the location, sanitary construction and health management of all State institutions; to direct the attention of the State to health matters which affect the industries, property, health and lives of the people of the State; to inspect at least annually State institutions and facilities; to make a report as to the health conditions of these institutions or facilities with suggestions and recommendations to the appropriate State agencies. It shall be the duty of the persons in immediate charge of these institutions or facilities to furnish all assistance necessary for a thorough inspection;

(11) To establish a schedule of fees based on income to be paid by a recipient for services provided by Migrant Health Clinics and Development Evaluation Centers;

(12) To establish fees for the sale of specimen containers, vaccines and other biologicals. The fees shall not exceed the actual cost of such items, plus transportation costs; ~~and~~

(13) To establish a fee to cover costs of responding to requests by employers for industrial hygiene consultation services and occupational consultation services. The fee shall not exceed two hundred dollars ($200.00) per on site ~~inspection.~~ inspection; and

(14) To establish a fee for companion animal certificate of examination forms to be distributed, upon request, by the Department to licensed veterinarians. The fee shall not exceed the cost of the form and shipping costs."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 445 **CHAPTER 228**

AN ACT TO ALLOW DEPARTMENT OF REVENUE EMPLOYEES TO LEVY ON TAXPAYERS' PERSONAL PROPERTY TO COLLECT TAXES TO THE SAME EXTENT AS A LOCAL TAX COLLECTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-242(a) and the title of G.S. 105-242 read as rewritten:

"*§ 105-242. ~~Warrant~~ Warrants for collection of taxes; garnishment and attachment; certificate or judgment for taxes.*

(a) If any tax imposed by this Subchapter, or any other tax levied by the State and payable to the Secretary of Revenue, ~~or any portion of such tax be~~ has not been paid within 30 days after ~~the same becomes~~ it became due and payable, and after ~~the same has been~~ it was assessed, the Secretary of Revenue ~~shall issue an~~ may take either of the following actions to collect the tax:

(1) The Secretary may issue a warrant or order under ~~his~~ the Secretary's hand and official seal, directed to the sheriff of any county of the State, commanding him to levy upon and sell the real and personal property of the taxpayer found within ~~his~~ the county for the payment of the ~~amount thereof, with the added penalties,~~ tax, including penalties and ~~additional taxes,~~ interest, and the cost of executing the ~~same,~~ warrant and to return to the Secretary ~~of Revenue~~ the money ~~collected by virtue thereof~~ collected, within a time to be specified in the warrant, ~~therein specified,~~ not less than 60 days from the date of the ~~order. The said~~ warrant; the sheriff ~~shall, thereupon,~~ upon receipt of the warrant shall proceed ~~upon the same~~ in all respects with like effect and in the same manner prescribed by law in respect to executions issued against property upon judgments of a court of record, and shall be entitled to the same fees for his services in executing the ~~order,~~ warrant, to be collected in the same manner.

(2) The Secretary may issue a warrant or order under the Secretary's hand and seal to any revenue officer or other employee of the Department of Revenue charged with the duty to collect taxes, commanding the officer or employee to levy upon and sell the taxpayer's personal property, including that described in G.S. 105-366(d), found within the State for the payment of the tax, including penalties and interest. Except as otherwise provided in this subdivision,

the levy upon the sale of personal property shall be governed by the laws regulating levy and sale under execution. The person to whom the warrant is directed shall proceed to levy upon and sell the personal property subject to levy in the same manner and with the same powers and authority normally exercised by sheriffs in levying upon and selling personal property under execution, except that the property may be sold in Wake County or in the county in which it was seized, in the discretion of the Secretary. In addition to the notice of sale required by the laws governing sale of property levied upon under execution, the Secretary may advertise the sale in any reasonable manner and for any reasonable period of time to produce an adequate bid for the property. Levy and sale fees, plus actual advertising costs, shall be added to and collected in the same manner as taxes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 635 **CHAPTER 229**

AN ACT TO AUTHORIZE THE CITY OF RALEIGH TO LEVY A MOTOR VEHICLE TAX NOT TO EXCEED FIFTEEN DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-97(a), as amended by Chapter 998 of the 1987 Session Laws (Reg. Sess. 1988), reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~ten dollars ($10.00)~~ fifteen dollars ($15.00) per year or part thereof upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar ($1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

Sec. 2. This act applies to the City of Raleigh only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 784 **CHAPTER 230**

AN ACT TO AUTHORIZE HYDE COUNTY TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Hyde County Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Use of tax revenue. Hyde County may use the proceeds of the occupancy tax for any public purpose.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Hyde County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

H.B. 806 **CHAPTER 231**

AN ACT TO CLARIFY THAT THE FEE FOR A WEAPON PERMIT IN CATAWBA COUNTY IS FIVE DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 1322 of the 1979 Session Laws is amended by deleting "Catawba County and".

Sec. 2. This act is effective from and after June 23, 1982.

In the General Assembly read three times and ratified this the 5th day of June, 1991.

S.B. 260 **CHAPTER 232**

AN ACT TO INCORPORATE THE VILLAGE OF TOBACCOVILLE, SUBJECT TO A REFERENDUM, TO AMEND THE CHARTER OF THE CITY OF KING, AND TO AUTHORIZE ENTRY INTO AND RECORDATION OF AN AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Village of Tobaccoville is enacted to read:

PART I. TOBACCOVILLE

A Charter for the Village of Tobaccoville is enacted to read:

"CHARTER FOR THE VILLAGE OF TOBACCOVILLE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

The inhabitants of the Village of Tobaccoville are a body corporate and politic under the name 'Village of Tobaccoville.' The Village of Tobaccoville has all the powers, duties, rights, privileges, and immunities conferred and imposed upon cities by the general law of North Carolina.

"CHAPTER II.

"VILLAGE BOUNDARIES.

Until modified in accordance with law, the boundaries of the Village of Tobaccoville are as follows:

LEGAL DESCRIPTION FOR THE TOBACCOVILLE TOWN LIMITS

BEGINNING on an iron pin in the center of King-Tobaccoville Road (SR 1611), said iron pin lying distant South 31 deg. 45 min. 19 sec. West 1663.49 feet from North Carolina Geodetic Survey monument "King"; running thence perpendicular to the centerline of said King-Tobaccoville Road 30.0 feet to a point in the northwestern right-of-way line of said King-Tobaccoville Road; thence southwardly with the northwestern right-of-way line of said King-Tobaccoville Road and 30.0 feet from the centerline to the northeast corner of Lot No. 123 of Forsyth County Tax Block 4728; thence, westwardly with the north line of said Lot No. 123, 489.02 feet to the northwest corner of the

1.619 acre tract currently zoned I-2 from said Lot No. 123 as is shown on sheet D1 of the Official Zoning Map of Forsyth County as is recorded in the office of the City-County Planning Board; thence, with said 1.619 acre tract, the two (2) following lines, namely: southwardly 72.3 feet; thence, eastwardly with the south line of said 1.619 acre tract to a point lying 300 feet westwardly from the centerline of said King-Tobaccoville Road at its nearest point; thence, parallel with said King-Tobaccoville Road and 300 feet westwardly of its center to a point 300 feet northwardly of the center of Spainhour Mill Road at its nearest point; thence, parallel with said Spainhour Mill Road and 300 feet from its centerline to the eastern margin of Butner Road (SR 1607); thence, southwestwardly with the eastern margin of said Butner Road extended to a point in the southern margin of said Spainhour Mill Road; thence, eastwardly with the said southern margin of Spainhour Mill Road to a point in the southern line of Lot No. 43C of Forsyth County Tax Block 4729; thence, southwardly to a point in the west line of Lot No. 39D of said Tax Block 4729, said point lying 300 feet southwardly from the center of said Spainhour Mill Road at its nearest point; thence, parallel with the centerline of said Spainhour Mill Road in an eastward direction to a point in the northwardly extension of the west line of Forsyth County Tax Block 4728A; thence, southwardly with the west line of said Tax Block 4728A to the southwest corner of said Tax Block 4728A; thence eastwardly to a corner of said Tax Block 4728A; thence, southwardly with said Tax Block 4728A to a corner of said Tax Block 4728A in the northern margin of Southern Railroad; thence, with the said northern margin of said Southern Railroad to the southeast corner of said Tax Block 4728A; thence, with the east line of said Tax Block 4728A to the northwest corner of Lot No. 16 of Forsyth County Tax Block 4723; thence, with the north line of said Lot No. 16 to the northeast corner of said Lot No. 16; thence with the east line of said Lot No. 16 to the northwest corner of Lot No. 15B of Forsyth County Tax Block 4723; thence, eastwardly with the north side of said Lot No. 15B to the eastern margin of Snyder Farm Road (SR1609); thence, northwardly with the eastern margin of said Snyder Farm Road to the southwest corner of Lot No. 8 of Tax Block 4728B; thence, eastwardly to a corner of said Tax Block 4728B; thence, northwardly with the east side of Tax Block 4728B to a point 300 feet southwardly from the center of said Spainhour Mill Road at its nearest point; thence, eastwardly and parallel to the centerline of said Spainhour Mill Road and 300 feet southwardly of said centerline to a point in the west line of Lot No. 16L of Forsyth County Tax Block 4728; thence, southward with the west line of said Lot No. 16L, 150 feet; thence, parallel with the centerline of said Spainhour Mill Road

to a point in the west line of Tax Lot No. 16K of said Tax Block 4728; thence, northwardly with the west line of said Tax Lot No. 16K to a point located 300 feet southward of the centerline of said Spainhour Mill Road at its nearest point; thence, eastward and parallel with the centerline of said Spainhour Mill Road to a point 300 feet westwardly of the centerline of King-Tobaccoville Road at its nearest point; thence, southwardly and parallel to the centerline of said King-Tobaccoville Road and 300 feet westwardly of said centerline to a point in the north line of Lot No. 3 of Forsyth County Tax Block 4725; thence, westwardly with the north line of said Lot No. 3 to the northwest corner of said Lot No. 3; thence, southwardly with the west line of said Lot No. 3 to the center of Southern Railroad; thence, southeastwardly with the center of Southern Railroad to a point 300 feet westwardly of the centerline of said King-Tobaccoville Road at its nearest point; thence, southwardly and parallel to the centerline of said King-Tobaccoville Road to a point 300 feet northwardly from the center of Rolling Hill Road (SR 1612) at its nearest point; thence, westwardly and parallel to the centerline of said Rolling Hill Road to a point in the northern extension of the western line of Lot No. 7B of Forsyth County Tax Block 4723; thence, southeastwardly and falling in with the western line of said Lot No. 7B to a point in the northern margin of said Rolling Hill Road; thence, southwardly and perpendicular to said Rolling Hill Road to a point in the southern margin of said Road; thence, eastwardly with the southern margin of said Rolling Hill Road to a point in the western line of Lot No. 5C of Forsyth County Tax Block 4726; thence, southwardly to the southwest corner of said Lot No. 5C; thence, eastwardly with the south line of said Lot No. 5C and continuing to the eastern corner of Lot No. 5H of Forsyth County Tax Block 4723; thence, southwardly with the east line of said Lot No. 5H to a point 300 feet northwardly of the center of Tobaccoville Road (SR 1620) at its nearest point; thence, westwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet northward of a point in the centerline of said Tobaccoville Road located 1200 feet eastwardly of the intersection of the centerline of said Tobaccoville Road and the centerline of Flip Newsom Road (SR 1613); thence, perpendicular to the centerline of said Tobaccoville Road in a northwestwardly direction, 300 feet; thence, parallel with the centerline of said Tobaccoville Road to a point in the western line of Tax Lot No. 6E of Forsyth County Tax Block 4723; thence, southeastwardly with the west side of said Tax Lot No. 6E to a point 300 feet northwardly of the centerline of said Tobaccoville Road at its nearest point; thence, westwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet eastwardly of the center of Flip Newsom Road (SR 1613) at its nearest

point; thence northwardly and parallel with the center of said Flip Newsom Road to a point in the northeast line of Lot No. 33 of Forsyth County Tax Block 4724; thence, southwestwardly to the northwest corner of Lot No. 10A of Forsyth County Tax Block 4723; thence, southwardly with the west line of said Lot No. 10A to a point 300 feet northwardly of the center of said Tobaccoville Road at its nearest point; thence, southwestwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet northwardly of the center of Ridge Road (SR 1614) at its nearest point; thence, westwardly and parallel to the centerline of said Ridge Road to a point in the east line of Lot No. 12 of said Tax Block 4723; thence, northwardly with the east line of said Lot No. 12, 750 feet; thence westwardly and perpendicular to the east line of said Lot No. 12, 300 feet; thence southwardly and parallel with the east line of said Lot No. 12 to a point 300 feet northwardly of the center of said Ridge Road at its nearest point; thence, westwardly and parallel to the centerline of said Ridge Road to a point in the east line of Lot No. 29 of said Tax Block 4723; thence, northwardly with the east line of said Lot No. 29 150 feet; thence, westwardly and parallel with the centerline of said Ridge Road to the western line of said Lot No. 29; thence, southwardly with the west line of said Lot No. 29 to a point 300 feet northwardly of the center of said Ridge Road at its nearest point; thence, westwardly and parallel to the centerline of said Ridge Road to a point in the east line of Lot No. 26H of said Tax Block 4723; thence, northwardly to the northernmost corner of Lot No. 26C of said Tax Block 4723; thence, northwardly to the northernmost corner of Lot No. 26T of said Tax Block 4723; thence, northwardly to the northeast corner of Lot No. 102F of said Tax Block 4723; thence, northwardly to the northeast corner of Lot No. 102N of said Tax Block 4723; thence, northwardly to the northeast corner of Lot No. 102B of said Tax Block 4723; thence, westwardly with the north line of said Lot No. 102B to a point in the southward extension of the eastern line of Lot No. 102D of said Tax Block 4723; thence, northwardly falling in with the eastern lines of Lot No. 102D and Lot No. 26L of said Tax Block 4723 to the northeast corner of said Lot No. 26L; thence, westwardly with the north line of said Lot No. 26L to the northwest corner of Lot No. 26L in the east line of Lot No. 25 of the said Tax Block 4723; thence, southwardly with the east line of said Lot No. 25 to the southeast corner of said Lot No. 25; thence, westwardly with the south line of said Lot No. 25 to the northwest corner of Lot No. 23K of Forsyth County Tax Block 4740; thence, southwardly with the western line of said Lot No. 23K to the southwest corner of said Lot No. 23K; thence, eastwardly to the southeast corner of Lot No. 23N of said Tax Block 4740; thence, southwardly with the west line of Lot

No. 23F of said Tax Block 4740 to the northern margin of said Ridge Road; thence, crossing said Ridge Road on a line perpendicular to its centerline to a point 300 feet southwardly of the centerline of said Ridge Road at its nearest point; thence, eastwardly and parallel with the centerline of said Ridge Road to a point 300 feet westwardly of the centerline of said Tobaccoville Road at its nearest point; thence, southwardly and parallel with the centerline of said Tobaccoville Road to a point in the northern margin of Boiling Springs Road (SR 1616); thence, eastwardly with the northern margin of said Boiling Springs Road to a point in the center of said Tobaccoville Road; thence, eastwardly and perpendicular with the centerline of said Tobaccoville Road at the last said point, 300 feet; thence, northwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet southwardly from the centerline of Kenleigh Forest Road at its nearest point; thence, parallel with the centerline of said Kenleigh Forest Road, eastwardly and southwardly to a point in the southern line of Lot No. 62J of Forsyth County Tax Block 4740; thence, eastwardly with the southern line of said Lot No. 62J extended to a point 300 feet eastwardly of the centerline of said Kenleigh Forest Road at its nearest point; thence, northwardly and parallel with the centerline of said Kenleigh Forest Road to a point 300 feet eastwardly of the centerline of Tabernacle Road (SR 1622) at its nearest point; thence, northwardly and parallel with the centerline of said Tabernacle Road to a point 300 feet eastwardly of the centerline of said Tobaccoville Road at its nearest point; thence, northwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet southwardly of the centerline of Reid Road (SR 1623) at its nearest point; thence, eastwardly and parallel to the centerline of said Reid Road to a point in the east line of said Tax Block 4740; thence, northwardly with the east line of said Tax Block 4740 to a point 300 feet northwardly of the centerline of said Reid Road at its nearest point; thence, westwardly and parallel with the centerline of said Reid Road to a point 300 feet eastwardly of the centerline of said Tobaccoville Road at its nearest point; thence, northwardly and parallel with the centerline of said Tobaccoville Road to a point 300 feet from a point in the centerline of said Tobaccoville Road lying 850 feet westward of the intersection of the centerline of said Tobaccoville Road and the centerline of Bethania-Tobaccoville Road; thence, southward on a line perpendicular to the centerline of said Tobaccoville Road 300 feet; thence, eastward on a line parallel with said Tobaccoville Road to a point in the east line of Tax Lot No. 8A of Tax Block 4742; thence, northwardly with the east side of said Tax Lot No. 8A to a point 300 feet from the centerline of said Tobaccoville Road at its nearest point; thence, eastward and parallel with said Tobaccoville Road to a point

300 feet westwardly of the centerline of Bethania-Tobaccoville Road at its nearest point; thence, southwardly and parallel with the centerline of said Bethania-Tobaccoville Road to a point 300 feet northwardly of the western extension of the centerline of Worrell Drive (SR 3920); thence, westwardly and parallel with the northern line of Lot No. 12A of Forsyth County Tax Block 4742 to a point in the east line of Lot No. 8A of said Tax Block 4742; thence, southwardly with the east line of said Lot No. 8A to a point 300 feet southwardly of the western extension of the centerline of said Worrell Drive; thence eastwardly and parallel with the centerline of said Worrell Drive and its westward extension to a point 300 feet southwestwardly of the centerline of said Bethania-Tobaccoville Road at its nearest point; thence, southeastwardly and parallel with the centerline of said Bethania-Tobaccoville Road to a point in the northwestern line of Lot No. 14A of said Tax Block 4742; thence, southwestwardly with the northwestern line of said Lot No. 14A extended to a point in the northeastern extension of the northwestern line of Lot No. 13A of said Tax Block 4742; thence, southwestwardly and falling in with the northwestern line of said Lot No. 13A to the westernmost corner of said Lot No. 13A; thence, with the southwestern line of said Lot No. 13A to the southernmost corner of said Lot No. 13A; thence, northeastwardly with the southeastern lines of said Lot No. 13A and Lot No. 13B of said Tax Block 4742 to an eastern corner of said Lot No. 13B; thence, northeastwardly and parallel with the eastern portion of the centerline of said Worrell Drive to a point 300 feet southwestwardly of the centerline of said Bethania-Tobaccoville Road at its nearest point; thence, southwardly and parallel with the centerline of said Bethania-Tobaccoville Road to a point on the line perpendicular to the centerline of said Bethania-Tobaccoville Road at its intersection with the centerline of Griffin Road (SR 1898); thence, northeastwardly to the intersection of the north margin of said Bethania-Tobaccoville Road and the north margin of said Griffin Road; thence, eastwardly with the northern margin of said Griffin Road to a point 300 feet northeastwardly of the centerline of said Bethania-Tobaccoville Road at its nearest point; thence, northwardly and parallel with the centerline of said Bethania-Tobaccoville Road to a point in the eastern line of Lot No. 31 of Tax Block 4725; thence, northwardly with the east line of said Lot No. 31, 350 feet; thence, westward on a line perpendicular to the eastern line of said Lot No. 31 to the western line of said Lot No. 31; thence, southward with the western line of said Lot No. 31 to a point 300 feet northeast of the centerline of said Bethania-Tobaccoville Road at its nearest point; thence, northwardly and parallel with the centerline of said Bethania-Tobaccoville Road to a point in the eastern line of Lot No. 18 of said

Tax Block 4725; thence northwardly with the eastern line of said Lot No. 18 and falling in with the eastern line of Forsyth County Tax Block 4755 to a point 300 feet southwardly of the centerline of said Tobaccoville Road at its nearest point; thence, eastwardly and parallel with the centerline of said Tobaccoville Road to a point 500 feet westwardly of the centerline of Stroupe Road (SR 1633) at its nearest point; thence, southwardly on a line perpendicular to said Tobaccoville Road to a point 397.25 feet northward of the southern line of Lot No. 614 of Tax Block 4725; thence, eastward and parallel with the southern line of said Lot No. 614 to the northwest corner of Lot No. 615 of said Tax Block 4725; thence, eastward with the north line of said Lot No. 615 to a point 300 feet westwardly of the centerline of said Stroupe Road (SR 1633) at its nearest point; thence, parallel with the centerline of said Stroupe Road, southwardly and eastwardly, to a point in the eastern line of Lot No. 43X of Tax Block 4725; thence, northward with the east side of said Lot No. 43X extended to the north side of said Stroupe Road in the southern line of Lot No. 420 of Tax Block 4725; thence, westwardly with the north line of said Stroupe Road to the eastern line of Lot No. 42K of said Tax Block 4725; thence, northwardly with the east line of said Lot No. 42K to a point 300 feet northwardly of the centerline of said Stroupe Road at its nearest point; thence, westwardly and parallel with the centerline of said Stroupe Road to a point in the west line of said Lot No. 42K; thence, northwardly and falling in with the east line of Forsyth County Tax Block 4725A to the southern line of Lot No. 117B of said Tax Block 4725; thence, eastwardly to the southeastern corner of Lot No. 119B of said Tax Block 4725; thence, northwardly and falling in with the west line of Lot No. 41C of said Tax Block 4725 to a point 300 feet southwardly of the centerline of said Tobaccoville Road at its nearest point; thence, eastwardly and parallel with the centerline of said Tobaccoville Road to a point in the eastern margin of U. S. Highway No. 52; thence, northwestwardly with the eastern margin of said U. S. Highway No. 52 to a point 300 feet northwardly of the centerline of Tobaccoville Road at its nearest point; thence, westwardly and parallel with the centerline of said Tobaccoville Road to a point in the centerline of the track of Southern Railway; thence, eastwardly with the centerline of said Southern Railway to the eastern margin of said U. S. Highway No. 52; thence, northwestwardly with the eastern right-of-way line of said U. S. Highway No. 52 to the southern right-of-way line of Moore-RJR Drive (North Carolina Department of Transportation Project No. 8.1620801); thence eastwardly with the said southern right-of-way line of Moore-RJR Drive to the eastern terminus of said Project No. 8.1620801; thence, northwardly with the eastern terminus of said Project No. 8.1620801 to the southern edge

of pavement of said Moore-RJR Drive; thence, westwardly with the said southern edge of pavement to the western terminus of said Project No. 8.1620801; thence, southwardly with the said western terminus of said Project No. 8.1620801 to the common corner of said Moore-RJR Drive at Ramp "D" of said Project No. 8.1620801 and the property of RJR designated as Block 4727, Lot 128B of the Forsyth County Tax Records ("RJR Property"); thence, continuing southwardly along the extension of last said line 50 feet to a point; thence, eastwardly and southwardly parallel to and at all points 50 feet from the common boundary line of the RJR Property and said Ramp "D" and the western right-of-way line of said U. S. Highway No. 52 to a point 50 feet northwardly of the northern right-of-way line of Southern Railway at its nearest point; thence, westwardly parallel to and at all points 50 feet from the common line of the RJR Property and the northern right-of-way line of said Southern Railway to a point 50 feet eastwardly from the eastern right-of-way line of said King-Tobaccoville Road at its nearest point; thence, northwardly parallel to and at all points 50 feet from the common line of said RJR Property and the said eastern right-of-way line of said King-Tobaccoville Road to a point on a line perpendicular to the said eastern right-of-way line of said King-Tobaccoville Road, which line also runs through the point and place of beginning; thence, along said perpendicular line to the point and place of beginning.

"CHAPTER III.

"INVOLUNTARY ANNEXATION EXCLUSION AREA.

"Sec. 3.1. The Village of Tobaccoville shall not, for a period of 40 years from the earlier of the incorporation of the Village of Tobaccoville or the effective date of the Amendment to the City of King Charter enacted during the 1991 Session of the General Assembly, involuntarily annex any property owned by R.J. Reynolds Tobacco Company, a New Jersey corporation ('Reynolds'), as of February 11, 1991, in the area that is bounded on the east by U.S. Highway 52, on the west by King-Tobaccoville Road, and on the south by a right-of-way of Southern Railway, less and except that area proposed to be included in the Village of Tobaccoville upon incorporation and that area proposed to be annexed by the City of King, as more particularly described in the Agreement referred to in Chapter IV below and incorporated herein and described there as the 'Industrial Opportunity Area,' and as more particularly shown on the map attached to the Agreement as Exhibit E.

"Sec. 3.2. The Village of Tobaccoville shall not, for a period of 10 years from the effective date of this Charter, annex any property lying west of King-Tobaccoville Road and east of Butner Road between Spainhour Mill Road and the Forsyth County/Stokes County line,

except for certain properties marked 'excluded' on Exhibit F to the Agreement by and among the City of King, Reynolds, and the Steering Committee for the Incorporation of the Village of Tobaccoville (the 'Agreement').

"CHAPTER IV.

"AUTHORITY TO ENTER INTO AGREEMENT.

"Sec. 4.1. This act specifically authorizes the Village of Tobaccoville to enter into and to affirm and ratify an Agreement by and among the City of King, R.J. Reynolds Tobacco Company and the Steering Committee for the Incorporation of Tobaccoville dated February 11, 1991. A copy of the Agreement is incorporated herein by reference. This act further authorizes the Village of Tobaccoville and the parties to the Agreement to modify and amend the Agreement, upon mutual consent of the parties, without the ratification of this legislature.

"CHAPTER V.

"GOVERNING BODY.

"Sec. 5.1. *Structure of the Governing Body and Number of Members.* The governing body of the Village of Tobaccoville shall be the Mayor and the Village Council. The Village Council shall have four members.

"Sec. 5.2. *Manner of Electing Council.* The qualified voters of the entire Village shall elect members of the Village Council.

"Sec. 5.3. *The Term of Office of Council Members.* In 1991, four members of the Council shall be elected. The two persons receiving the highest number of votes shall be elected for four-year terms, and the two persons receiving the next highest number of votes shall be elected for two-year terms. In 1993 and biennially thereafter, two members of the Council shall be elected for four-year terms.

"Sec. 5.4. *Selection of Mayor and Term of Office.* The qualified voters of the entire Village shall elect the Mayor. A Mayor shall be selected in 1991 and every two years thereafter for a two-year term.

The Mayor of Tobaccoville shall have the same voting rights and privileges and shall be subject to the same voting limitations and requirements as are Council members under the general law. In determining a quorum, the Mayor shall be treated as a member of the Council. The Mayor, after participating with Council members in a vote that results in a tie, may not vote a second time to break that tie.

"CHAPTER VI.

"ELECTIONS.

"Sec. 6.1. *Type of Election.* The Village officers shall be elected on a nonpartisan basis and the results determined by the plurality method as provided by G.S. 163-292.

"Sec. 6.2. *Date of Election.* Elections shall be conducted in accordance with Chapter 163 of the General Statutes, with the first election of Village officers on November 5, 1991.

"CHAPTER VII.

"ADMINISTRATION.

"Sec. 7.1. *Mayor-Council Form of Government.* (a) The Village of Tobaccoville shall operate under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes and any other charter provision not in conflict therewith.

(b) The Village Council may appoint such officers and employees as may be necessary, none of whom need be a resident of the Village at the time of appointment. Such employees or officers shall serve at the pleasure of the Village Council. The Village Council shall fix all salaries, prescribe bonds, and require such oaths as they may deem necessary.

(c) The Village Council shall choose a Village Clerk. The Village Clerk shall keep the records of the Village Council and perform other duties as may be required by law or the Village Council.

(d) The Council may assign additional functions or duties to offices, departments, or agencies. Where the positions are not incompatible, the Council may combine in one person the powers and duties of two or more offices created or authorized by this Charter.

"Sec. 7.2. *Transitional Government.*

Until the Mayor and members of the Village Council are elected in 1991 in accordance with the Village Charter and the law of North Carolina, officers of the Tobaccoville Incorporation Steering Committee shall serve as the interim governing body. Terry Shore, the Chairman of the Steering Committee, shall be the interim Mayor and the following members of the committee shall serve as interim Council members until the results of the 1991 election are certified and the newly-elected successors take office: Ken Bradstock, Kay G. Long, Beth White, and Greg Horton. Vacancies in the interim Council shall be filled by appointment made by the remaining members. A vacancy in the office of interim Mayor shall be filled by appointment made by the interim governing board.

The first Council meeting will be the organizational meeting.

"Sec. 7.3. *Taxes and Budget.* From and after July 1, 1991, the citizens and property in the Village of Tobaccoville shall be subject to municipal taxes levied for the year beginning July 1, 1991, and for that purpose, the Village shall obtain from Forsyth County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1991, and the businesses in the Village shall be liable for privilege license tax from the effective date of the privilege license tax ordinance.

The Village may adopt a budget ordinance for fiscal year 1990-91 without following the timetable in the local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. No property taxes may be levied for the calendar year beginning January 1, 1990, through June 30, 1991.

The Village may adopt a budget ordinance for fiscal year 1991-92 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical.

The Village of Tobaccoville will be eligible to receive distributions of State funds during fiscal year 1991-92 as if it had been incorporated with an effective date of June 30, 1991."

Sec. 2. (a) The Forsyth County Board of Elections shall conduct an election on a date set by it, to be not less than 60 nor more than 120 days after the date of ratification of this Charter, for the purpose of submission to the qualified voters of the area described in Chapter II of the CHARTER FOR THE VILLAGE OF TOBACCOVILLE, the question of whether or not such area shall be incorporated as Tobaccoville, except that the election may also be held on June 25, 1991, and if held on that date, the Forsyth County Board of Elections may adjust any timetables or deadlines set by law. Registration for the election shall be conducted in accordance with G.S. 163-288.2. Absentee voting shall be allowed as if the municipal governing body had adopted a resolution under G.S. 163-302 to allow absentee voting.

(b) In the election, the questions on the ballot shall be:

1. [ ] *FOR* incorporation of Tobaccoville
   [ ] *AGAINST* incorporation of Tobaccoville

2. If incorporation is approved, the name of the incorporated area shall be
   [ ] *City of Tobaccoville*
   [ ] *Town of Tobaccoville*
   [ ] *Village of Tobaccoville*

(c) In such election, if a majority of the votes cast are not cast FOR incorporation of Tobaccoville, this Charter shall have no force and effect.

(d) In such election, if a majority of the votes are cast *FOR* incorporation of Tobaccoville, this Charter shall become effective on the date that the Forsyth County Board of Elections determines the result of the election and the Village of Tobaccoville shall have that name which receives the highest number of votes in question 2 with all provisions of this Charter being deemed modified to reflect such name.

PART II. KING

Sec. 3. Article II of the Charter of the City of King, being Chapter 351, Session Laws of 1983, as amended, is rewritten to read:

"ARTICLE II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the City of King consist of the area within the corporate limits on June 30, 1991, and also the following:

(Area 'A')

BEGINNING on a concrete right-of-way monument located on the Southwest right-of-way line of US Highway #52, said monument being a present corner of the City of King boundary and said monument being located South 37 degrees 46 minutes 09 seconds East 994.51 feet from a North Carolina Grid monument in the North Carolina Grid System entitled 'King', having the grid system coordinate of x=1, 597, 446.35 and y=916,217.01, thence with the present boundary line of the City of King the following eleven (11) courses and distances: crossing said Highway North 75 degrees 20 minutes 32 seconds East 320.36 feet to a point in the Northeast right-of-way of US Highway #52; thence along the said right-of-way the following seven (7) courses and distances: North 38 degrees 04 minutes 43 seconds West 73.46 feet to a point; thence along a spiral chord to the right North 36 degrees 46 minutes 30 seconds West 191.72 feet to a point; thence South 55 degrees 55 minutes 16 seconds West 30.00 feet to a point; thence a curve to the right North 25 degrees 19 minutes 44 seconds West a chord distance of 409.03 feet with a radius of 1344.39 feet to a point; thence along the spiral chord to the right, North 13 degrees 53 minutes 25 seconds West 193.81 feet to a point; thence North 12 degrees 34 minutes 44 seconds West 80.38 feet to a point; thence along a spiral chord to the left North 13 degrees 39 minutes 55 seconds West 59.02 feet to a point; thence South 88 degrees 38 minutes 29 seconds East 61.87 feet to an existing iron stake and continuing along the same course 249.56 feet for a total distance of 311.43 feet to an existing iron stake, thence North 01 degrees 23 minutes 21 seconds East 188.49 feet to a point; thence South 88 degrees 42 minutes 18 seconds East 676.94 feet to an existing iron; thence South 88 degrees 30 minutes 09 seconds East 790.93 feet to a point; thence South 89 degrees 13 minutes 09 seconds East 155.59 feet to a point; thence South 1 degree 37 minutes 46 seconds West 535.37 feet to a point; thence South 00 degrees 32 minutes 36 seconds West 558.11 feet to a point; thence North 87 degrees 36 minutes 03 seconds West 498.30 feet to a point; thence South 3 degrees 56 minutes 35 seconds West 1162.28 feet to a point on the Northeast right-of-way line of US Highway #52; thence along

said right-of-way the following courses and distances; South 38 degrees 05 minutes 51 seconds East 145.53 feet to a concrete right-of-way monument; North 51 degrees 39 minutes 09 seconds East 9.87 feet to a concrete right-of-way monument; South 38 degrees 05 minutes 11 seconds East 203.20 feet to concrete right-of-way monument; South 51 degrees 55 minutes 16 seconds West 10.00 feet to a concrete right-of-way monument; South 38 degrees 05 minutes 29 seconds East 697.59 feet to a concrete right-of-way monument; North 51 degrees 55 minutes 17 seconds East 29.85 feet to a concrete right-of-way monument; thence South 38 degrees 04 minutes 24 seconds East 602.27 feet to a concrete right-of-way monument; South 51 degrees 47 minutes 21 seconds West 29.78 feet to a concrete right-of-way monument; South 38 degrees 04 minutes 15 seconds East 311.75 feet to a concrete right-of-way monument; South 58 degrees 00 minutes 40 seconds East 382.26 feet to a concrete right-of-way monument; South 75 degrees 02 minutes 27 seconds East 191.13 feet to a concrete right-of-way monument; South 75 degrees 02 minutes 40 seconds East 227.63 feet to a concrete right-of-way monument; South 54 degrees 11 minutes 57 seconds East 207.43 feet to a concrete right-of-way monument; South 39 degrees 36 minutes 20 seconds East 122.61 feet to a concrete right-of-way monument; South 28 degrees 11 minutes 36 seconds East 166.35 feet to a concrete right-of-way monument; South 84 degrees 33 minutes 55 seconds East 66.63 feet to a concrete right-of-way monument; South 75 degrees 50 minutes 15 seconds East 158.32 feet to a concrete right-of-way monument; North 69 degrees 19 minutes 30 seconds East 279.64 feet to a concrete right-of-way monument; North 38 degrees 38 minutes 40 seconds East 248.78 feet to a concrete right-of-way monument; thence North 89 degrees 11 minutes 17 seconds East 43.13 feet to a point at the East edge of pavement of the Moore-RJR Drive (SR #1634); thence along the East and South edge of pavement a curve to the right, said curve having a radius of 492.10 feet, a delta angle of 76 degrees 07 minutes 45 seconds and a chord bearing and chord distance of South 47 degrees 55 minutes 47 seconds West 606.81 feet to a point; thence continuing with said South edge of pavement South 85 degrees 59 minutes 39 seconds West 879.35 feet, crossing said Highway #52 to a point; thence along said South edge of pavement South 85 degrees 28 minutes 45 seconds West 458.31 feet to a point; thence continuing along South edge of pavement South 86 degrees 55 minutes 19 seconds West 462.50 feet to a point in the West line of the Department of Transportation's property (State Highway Project No. 8.1620801) described in deed from R.J. Reynolds Tobacco Company to the Department of Transportation in Book 1453, Page 0683, Forsyth County Register of Deeds; thence along the right-of-way lines

of Moore-RJR Drive and US Highway #52 the following thirteen (13) courses and distances; North 00 degrees 01 minutes 53 seconds West 145.11 feet to a concrete monument; South 86 degrees 12 minutes 51 seconds East 147.64 feet to a concrete right-of-way monument; North 86 degrees 00 minutes 02 seconds East 214.02 feet to a concrete monument; North 7 degrees 37 minutes 33 seconds West 293.68 feet to a concrete right-of-way monument; North 11 degrees 15 minutes 49 seconds West 371.72 feet to a concrete right-of-way monument; North 26 degrees 26 minutes 56 seconds West 194.47 feet to a concrete right-of-way monument; North 38 degrees 03 minutes 03 seconds West 656.79 feet to a point; North 38 degrees 03 minutes 04 seconds West 662.68 feet to a point; South 48 degrees 00 minutes 02 seconds West 20.05 feet to a point; North 38 degrees 07 minutes 32 seconds West 462.02 feet to a point; North 38 degrees 07 minutes 17 seconds West 146.23 feet to a point; North 53 degrees 39 minutes 28 seconds East 20.05 feet to a point; North 38 degrees 09 minutes 03 seconds West 471.24 feet to a point; thence North 87 degrees 00 minutes 48 seconds West 667.61 feet to a point; North 1 degree 37 minutes 58 seconds East 100.02 feet to a point; North 5 degrees 55 minutes 01 second East 611.43 feet to a point; thence North 49 degrees 56 minutes 11 second East 10.17 feet to the point of BEGINNING. Containing 106.1186 acres, more or less.

All Bearings are oriented to the North Carolina Grid System.

(Area 'B')

BEGINNING on an existing iron stake West of the King-Tobaccoville Road, said iron being a present boundary corner for the City of King and being located South 38 degrees 38 minutes 58 seconds East 290.28 feet from NCGS monument entitled 'King', said grid monument coordinates being x=1,597,446.35, y=916,217.01; thence with said City of King's boundary, crossing the King-Tobaccoville Road, South 00 degrees 30 minutes 08 seconds East 272.67 feet to an existing iron stake on the East right-of-way line; thence with said right-of-way line a curve to the right, said curve having a radius of 2914.93 feet, a bearing of South 32 degrees 14 minutes 06 seconds West 395.08 feet to a point; thence continuing along said right-of-way North 53 degrees 52 minutes 45 seconds West 20.00 feet to a point; thence continuing with said right-of-way South 36 degrees 07 minutes 15 seconds West 755.64 feet to a point at the back of curb of the Northern entrance to the Reynolds Tobacco Company; thence crossing said King-Tobaccoville Road North 53 degrees 52 minutes 45 seconds West 60.00 feet to a point; thence parallel with the center line of said highway, being along the right-of-way, Southwestwardly to a point, the Southeastern corner of Lot #202B, Block 4728, Forsyth County Tax

Map; thence with the North line of Lot #123 and the South line of Lot #202B, Forsyth County Tax Block 4728, Westwardly to the Southwest corner of Said Lot #202B, said point being a corner of Lot #12R, Forsyth County Tax Block 4728; thence with the West line of Lots #202B, 202A and 201 and being with the East line of Lot #12R, Northwardly to a point in the South line of Forsyth County Tax Block 4728C (said Block 4728C is Coventry Forest Subdivision); thence with the South line of Tax Block 4728C Westwardly to a point, the Southwest corner of Tax Block 4728C; thence with the Western lines of Tax Block 4728C Northwardly to a point the Northwest corner of Tax Block 4728C; thence with the North line of Tax Block 4728C and with the South lines of Lot 27, Tax Map #83, Stokes County Tax Maps, Map #83B, Stokes County Tax Maps, Lot #26, Tax Map #83, Stokes County Tax Maps, Eastwardly to a point, the Southeast corner of Lot #26; thence with the East line of Lot #26 and the West line of Lot #25, Stokes County Tax Maps, Northwardly to a point in the South right-of-way line of Newsome Road (SR 1222), said point being in the present boundary line of the City of King; thence with the present boundary line of the City of King Eastwardly along the South right-of-way line of Newsome Road (SR 1222) to the Northeast corner of Lot #25, Tax Map #83; thence Southwardly with the East boundary of Lot #25, Stokes County Tax Map #83, and being along the City of King's present boundary to the Southwest corner of Lot #24, Tax Map #83, Stokes County Tax Maps; thence with the South lines of Lot #24 and Lot #24A, Stokes County Tax Map #83 and being along the present boundary of the City of King South 85 degrees 59 minutes 56 seconds East 958.15 feet to the point of BEGINNING.

Any and all bearings are oriented to North Carolina Grid.

(Area 'C')

BEGINNING at a point where the North right-of-way line of Ingram Road (SR 1108) intersects the Northeast right-of-way line of US Highway #52; thence with the North right-of-way line of said Ingram Road (SR 1108) Eastwardly to the intersection of said right-of-way line and the West right-of-way line of the King-Tobaccoville Road (SR 1112); thence Northwardly along the West right-of-way line of the said King-Tobaccoville Road (SR 1112) to a point where the West right-of-way line intersects the South right-of-way line of Meadowbrook Drive; thence Westwardly along the South right-of-way line of Meadowbrook Drive (SR 1105) to a point where the South right-of-way line of Meadowbrook Drive intersects the center line of US Highway #52; thence Northwestwardly with the center line of US Highway #52 to a point, a corner of the present boundary of the City of King, said point lying due South of the Southwestern corner of

Meadowbrook Estates Subdivision Plat referenced as Stokes County Tax Map 72-A as per the description of the City of King's Boundaries; thence due South to the intersection of the Southwest right-of-way line of US Highway #52; thence with said right-of-way line of US Highway #52 Southeastwardly to the Northernmost corner of Lot #36 and the Easternmost corner of Lot #38 as shown on the Stokes County Tax Map #83; thence Eastwardly crossing said highway to a point on the Northeast right-of-way line, said point being shown as the Southernmost corner of Lot #42 and also shown as a corner of Lot #44 Stokes County Tax Map #83; thence along said Northeast right-of-way line of said highway Southeastwardly to the point of BEGINNING.

SAVE AND EXCEPT from this description any and all land that was described in the original boundary of the City of King or of any subsequent annexation.

"Sec. 2.2. The City of King is expressly authorized, pursuant to Section 4 of the act ratifying this charter amendment, to enter into the Agreement by and among the City of King, R.J. Reynolds Tobacco Company, a New Jersey corporation ('Reynolds') and the Steering Committee for the Incorporation of the Village of Tobaccoville (the 'Agreement').

"Sec. 2.3. The City of King shall not, for a period of 40 years from the earlier of the incorporation of the Village of Tobaccoville or the effective date of this charter amendment, involuntarily annex any property owned by Reynolds as of February 11, 1991, in the area that is bounded on the east by U.S. Highway 52, on the West by King-Tobaccoville Road, and on the South by a right-of-way of Southern Railway, less and except that area proposed to be included in the Village of Tobaccoville upon incorporation and that area proposed to be annexed by the City of King, as more particularly described in the Agreement as the 'Industrial Opportunity Area' and as more particularly shown on the map attached to the Agreement as Exhibit E.

"Sec. 2.4. The City of King shall not, for a period of 10 years from the effective date of this charter amendment, involuntarily annex any property lying west of King-Tobaccoville Road and east of Butner Road between Spainhour Mill Road and the Forsyth County/Stokes County line, except for certain properties marked 'excluded' on Exhibit F to the Agreement (this area is described in the Agreement as the 'Non-Annexation Area')."

Sec. 4. This act specifically authorizes the City of King to enter into the Agreement; a copy of the Agreement is incorporated herein by reference. This act further authorizes the parties to the Agreement to

modify and amend the Agreement, upon mutual consent of the parties, without the ratification of this legislature.

PART III. EFFECTIVE DATES

Sec. 5. The agreement by and among the City of King, R.J. Reynolds Tobacco Company and the Steering Committee for the incorporation of Tobaccoville, dated February 11, 1991, and incorporated in this act by reference shall be recorded by the parties in the registries of Forsyth and Stokes Counties.

Sec. 6. Section 1 of this act is effective as provided herein. Sections 2, 4, and 5 of this act are effective upon ratification. Section 3 of this act becomes effective June 30, 1991.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

S.B. 628 **CHAPTER 233**

AN ACT TO AMEND THE CHARTER OF THE CITY OF ASHEBORO.

The General Assembly of North Carolina enacts:

Section 1. Section 5.1 of Chapter 481 of the 1967 Session Laws, being the Charter of the City of Asheboro, is amended by rewriting the third sentence of that section to read:

"At the time of his appointment he need not be a resident of the City, but shall reside therein, or within the extraterritorial jurisdiction of the City, during his tenure of office."

Sec. 2. Article X of Chapter 481 of the 1967 Sessions Laws, being the Charter of the City of Asheboro, is amended by adding a new section to read:

"Sec. 10.3. Chief of Police. At the time of his appointment, any Chief of Police need not be a resident of the City, but shall reside therein or within the extraterritorial jurisdiction of the City during his tenure of office."

Sec. 3. Chapter 481 of the 1967 Session Laws, being the Charter of the City of Asheboro, is amended by adding a new Article to read:

"ARTICLE XVI. FIRE DEPARTMENT.

"Sec. 16.1. Chief of Fire Department. At the time of his appointment, the Chief of the Fire Department need not be a resident of the City but shall reside therein or within the extraterritorial jurisdiction of the City during his tenure of office."

Sec. 4. Section 2 of this act applies only to appointments made after the effective date of this act.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

S.B. 645 **CHAPTER 234**

AN ACT TO MAKE CHANGES IN THE LAW RELATING TO THE CREATION AND PERFECTION OF SECURITY INTERESTS IN RENTS AND PROFITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-20 reads as rewritten:

"*§ 47-20. Deeds of trust, ~~mortgages and~~ mortgages, conditional sales ~~contracts~~; contracts, assignments of leases and rents; effect of registration.*

(a) No deed of trust or mortgage of real or personal property, or of a leasehold interest or other chattel real, or conditional sales contract of personal property in which the title is retained by the vendor, shall be valid to pass any property as against lien creditors or purchasers for a valuable consideration from the grantor, mortgagor or conditional sales vendee, but from the time of registration thereof as provided in this Article; provided however that any transaction subject to the provisions of the Uniform Commercial Code (Chapter 25 of the General Statutes) is controlled by the provisions of that act and not by this section.

(b) For purposes of this section and G.S. 47-20.1, the following definitions apply:

(1) 'Rents, issues, or profits' means all amounts payable by or on behalf of any lessee, tenant, or other person having a possessory interest in real estate on account of or pursuant to any written or oral lease or other instrument evidencing a possessory interest in real property or pursuant to any form of tenancy implied by law, and all amounts payable by or on behalf of any licensee or permittee or other person occupying or using real property under license or permission from the owner or person entitled to possession. The term shall not include farm products as defined in G.S. 25-9-109(3), timber, the proceeds from the sale of farm products or timber, or the proceeds from the recovery or severance of any mineral deposits located on or under real property.

(2) 'Assignment of leases, rents, issues, or profits' means every document assigning, transferring, pledging, mortgaging, or conveying an interest in leases, licenses to real property, and rents, issues, or profits arising from real property, whether set forth in a separate instrument or contained in a

mortgage, deed of trust, conditional sales contract, or other deed or instrument of conveyance.

(3) 'Collateral assignment' means any assignment of leases, rents, issues, or profits made and delivered in connection with the grant of any mortgage, or the execution of any conditional sales contract or deed of trust or in connection with any extension of credit made against the security of any interest in real property, where the assignor retains the right to collect or to apply such lease revenues, rents, issues, or profits after assignment and prior to default.

(c) The recording of a written document in accordance with G.S. 47-20.1 containing an assignment of leases, rents, issues, or profits arising from real property shall be valid and enforceable from the time of recording to pass the interest granted, pledged, assigned, or transferred as against the assignor, and shall be perfected from the time of recording against subsequent assignees, lien creditors, and purchasers for a valuable consideration from the assignor.

(d) Where an assignment of leases, rents, issues, or profits is a collateral assignment, after a default under the mortgage, deed of trust, conditional sales contract, or evidence of indebtedness which such assignment secures, the assignee shall thereafter be entitled, but not required, to collect and receive any accrued and unpaid or subsequently accruing lease revenues, rents, issues, or profits subject to the assignment, without need for the appointment of a receiver, any act to take possession of the property, or any further demand on the assignor. Unless otherwise agreed, after default the assignee shall be entitled to notify the tenant or other obligor to make payment to him and shall also be entitled to take control of any proceeds to which he may be entitled. The assignee must proceed in a commercially reasonable manner and may deduct his reasonable expenses of realization from the collections.

(e) This section shall not exclude other methods of creating, perfecting, collecting, sequestering, or enforcing a security interest in rents, issues, or profits provided by the law of this State."

Sec. 2. This act becomes effective October 1, 1991, and applies to all assignments of leases, rents, issues, or profits, including collateral assignments, whether recorded prior to or after the effective date of this act.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

S.B. 662 **CHAPTER 235**

AN ACT TO REPEAL THE SUNSET ON THE ACT PERTAINING TO INVENTION DEVELOPMENT SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Section 3 of Chapter 746 of the 1989 Session Laws is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

S.B. 773 **CHAPTER 236**

AN ACT TO PERMIT RECYCLABLE PLASTIC YOKES OR RING TYPE HOLDING DEVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399.2 reads as rewritten:

"§ *14-399.2.* ~~*Prohibition of nondegradable plastic yokes or ring type holding devices.*~~ *Certain plastic yoke and ring type holding devices prohibited.*

(a) As used in this ~~section, 'Degradable'~~ section:

(1) 'Degradable' means that within one year after being discarded, the yoke or ring type holding device is capable of becoming embrittled ~~and/or~~ or decomposing by photodegradation, biodegradation, or chemo-degradation under average seasonal conditions into components other than heavy metals or other toxic ~~substances as prescribed by the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2795, 42 U.S.C. § 6901 et seq., as amended.~~ substances.

(2) 'Recyclable' means that the yoke or ring type holding device is capable of being collected and processed for reuse as a product or raw material.

(b) No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic ~~which is not degradable.~~ that is neither degradable nor recyclable. No person may sell or distribute for sale in this State any container connected to another by a yoke or ring type holding device constructed of plastic that is recyclable but that is not degradable unless such device does not have an orifice larger than one and one-half inches. The manufacturer of ~~such~~ a degradable yoke or ring type holding device shall ~~use a~~ emboss or mark the device with a

nationally recognized symbol ~~that shall be embossed on the yoke or ring type holding device for inspection~~ indicating that the device is degradable. The manufacturer of a recyclable yoke or ring type holding device shall emboss or mark the device with a symbol of the type specified in G.S. 130A-309.10(e) indicating the plastic resin used to produce the device and that the device is recyclable. The manufacturer shall register the symbol with the Secretary of State with a sample of the device.

(c) Any person who sells or distributes for sale a yoke or ring type holding device in violation of this section shall be guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than two hundred dollars ($200.00). In lieu of a fine or any portion thereof or in addition to a fine, any violation of this section may also be punished by a term of community service.

(d) Other than a manufacturer required to use and register a symbol under subsection (b), a person may not be prosecuted under this section if, at the time of sale or distribution for sale, the yoke or holding device bears a symbol meeting the requirements of this section which has been registered with the Secretary of State."

Sec. 2. This act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

H.B. 428 **CHAPTER 237**

AN ACT TO ENHANCE MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE CARE IN LOCAL CONFINEMENT FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-221(a) reads as rewritten:

"(a) The Secretary shall develop and publish minimum standards for the operation of local confinement facilities and may from time to time develop and publish amendments to the standards. The standards shall be developed with a view to providing secure custody of prisoners and to protecting their health and welfare and providing for their humane treatment. The standards shall provide for:

(1) Secure and safe physical facilities;
(2) Jail design;
(3) Adequacy of space per prisoner;
(4) Heat, light, and ventilation;
(5) Supervision of prisoners;
(6) Personal hygiene and comfort of prisoners;

(7) Medical care for ~~prisoners;~~ prisoners, including mental health, mental retardation, and substance abuse services;
(8) Sanitation;
(9) Food allowances, food preparation, and food handling;
(10) Any other provisions that may be necessary for the safekeeping, privacy, care, protection, and welfare of prisoners."

Sec. 2. G.S. 153A-225(a) reads as rewritten:

"(a) Each unit that operates a local confinement facility shall develop a plan for providing medical care for prisoners in the facility. The plan

(1) Shall be designed to protect the health and welfare of the prisoners and to avoid the spread of contagious disease;
(2) Shall provide for medical supervision of prisoners and emergency medical care for prisoners to the extent necessary for their health and welfare;
(3) Shall provide for the detection, examination and treatment of prisoners who are infected with tuberculosis or venereal diseases.

The unit shall develop the plan in consultation with appropriate local officials and organizations, including the sheriff, the county physician, the local or district health director, and the local medical society. The plan must be approved by the local or district health ~~director,~~ director after consultation with the area mental health, developmental disabilities, and substance abuse authority, if it is adequate to protect the health and welfare of the prisoners. ~~upon~~ Upon a determination that the plan is adequate to protect the health and welfare of the prisoners, ~~and~~ the plan must be adopted by the governing body."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

H.B. 854 **CHAPTER 238**

AN ACT REGARDING THE CONTRACTS OF SUPERINTENDENTS OF LOCAL BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-271 reads as rewritten:

"§ *115C-271. Selection by local board of education, term of office.*

~~At a meeting to be held biennially or quadrennially not later than April 30, the various county boards~~ Each local board of education shall ~~meet and~~ elect a ~~county~~ superintendent of ~~schools. Such superintendent shall take office on the following July 1 and shall serve~~

~~for a term of two or four years, or until his successor is elected and qualified.~~ schools for a term of one to four years, ending on June 30th of the final 12 months of the contract. ~~The superintendent shall be elected for a term of either two or four years, which term shall be in the discretion of the county board of education. The county~~ The board of education may, with the written consent of the current superintendent, extend or renew the term of the superintendent's contract at any time ~~during the final~~ after the first 12 months of the contract; provided, however, ~~when new members are to be elected or appointed and sworn in during the final 12 months of the contract~~ that the current superintendent's contract may not be extended for a term of greater than four years; and provided, further, that if new board members have been elected or appointed and are to be sworn in, the board may not act to extend or renew the current superintendent's contract until after the new members have been sworn in. The term and conditions of employment shall be stated in a written contract which shall be entered into between the board of education and the superintendent. A copy of the contract shall be filed with the Superintendent of Public Instruction before any person is eligible for this office.

Contracts of employment for a period of less than one year shall be governed and limited by G.S. 115C-275.

It is the policy of the State of North Carolina that the superintendents of each of the several school administrative units be hired solely at the discretion of the local boards of education and that a candidate for superintendent of a local school administrative unit must have been, at least, a principal in a North Carolina public school or have equivalent experience as prescribed by the State Board of Education and have other minimum credentials, educational prerequisites and experience requirements as the State Board of Education shall prescribe. The State Board of Education is directed to promulgate prerequisites for candidacy for superintendent not later than January 1, 1985.

If any board of education shall elect a person to serve as superintendent of schools in any local school administrative unit who is not qualified, or cannot qualify, according to this section, such election is null and void and it shall be the duty of such board of education to elect a person who can qualify.

~~In all city administrative units, the superintendent of schools shall be elected by the city board of education of such unit, to serve for a period of either two or four years, which term of office shall be within the discretion of the board; and the qualifications, provisions and approval shall be the same as for county superintendents. The city board of education may, with the written consent of the current~~

~~superintendent, extend or renew the term of the superintendent's contract at any time during the final 12 months of the contract; provided, however, when new members are to be elected or appointed and sworn in during the final 12 months of the contract, the board may not act until after the new members have been sworn in. The election shall be held biennially or quadrennially, as the case may be, during the month of April.~~"

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

H.B. 915 **CHAPTER 239**

AN ACT TO PROVIDE FOR A CODE OF CONDUCT FOR PRACTICING PSYCHOLOGISTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-270.15 reads as rewritten:

"§ *90-270.15.* ~~*Refusal,*~~ *Denial, suspension, or revocation of* ~~*licenses.*~~ *licenses, and other disciplinary and remedial actions; unprofessional conduct; relinquishing of license.*

(a) ~~A license applied for, or issued under this Article may be refused, suspended, revoked, or otherwise limited, as provided in subsection (e) below, by the Board upon proof that the person to whom the license was issued:~~ Any applicant for licensure and any person licensed under this Article shall have behaved in conformity with the ethical and professional standards specified in this section and in the rules and regulations of the Board. The Board may deny, suspend, revoke, discipline, place on probation, limit, or require remediation or rehabilitation, all as provided for in subsection (f) below, upon proof that the applicant or the person to whom the licenses was issued:

(1) Has been convicted of a ~~felony; or~~ felony or entered a plea of guilty or *nolo contendere* to any felony charge;

(2) Has been convicted of ~~a~~ or entered a plea of guilty or *nolo contendere* to any misdemeanor involving moral ~~turpitude or involving~~ turpitude, misrepresentation or fraud in dealing with the ~~public or~~ public, or conduct otherwise relevant to ~~his~~ fitness to practice ~~psychology; or~~ psychology, or a misdemeanor charge reflecting the inability to practice psychology with due regard to the health and safety of clients or patients;

(3) Has engaged in fraud or deceit in securing or attempting to secure a license under this Article or the renewal

thereof or has willfully concealed from the Board material information in connection with application for or renewal of a license under this ~~Article or the renewal thereof; or~~ Article;

~~(4) Is a habitual drunkard or is addicted to the use of deleterious habit-forming drugs; or~~

(4a) Has demonstrated an inability to practice psychology with reasonable skill and safety by reason of illness, inebriation, misuse of drugs, narcotics, alcohol, chemicals, or any other substance affecting mental or physical functioning, or as a result of any mental or physical condition;

(5) Has practiced any fraud, deceit, or misrepresentation upon the ~~public~~ public, the Board, or upon any individual in connection with the practice of ~~psychology or~~ psychology, the offer of psychological ~~services or~~ services, the filing of Medicare, Medicaid, or other claims to any third party payor, or in any manner otherwise relevant to ~~his~~ fitness for the practice of psychology; ~~or~~

(6) Has made ~~fraudulent or misleading~~ fraudulent, misleading, or intentionally or materially false statements pertaining to ~~his~~ education, licensure, professional credentials, or related to ~~his~~ qualifications or fitness for the practice of psychology to the public, any individual, the Board, or any other organization; ~~or~~

(7) Has had a license or certification for the practice of psychology in any other state, or territory of the United States, or any other country, suspended or ~~revoked; or~~ revoked, or has been disciplined by any other state or territorial licensing or certification board for conduct which would subject him to discipline under this Article;

(8) Has been guilty of ~~unprofessional~~ immoral, dishonorable, unprofessional, or unethical conduct as defined ~~by~~ in this subsection, in subsection (a1) below, or in the then-current code of ethics ~~published by~~ of the American Psychological ~~Association; or~~ Association, except as the provisions of such code of ethics may be inconsistent and in conflict with the provisions of this Article, in which case, the provisions of this Article control;

(9) Has violated any provision of this Article or of the duly adopted rules and regulations of the Board; or

~~(10) Has employed a psychologist who has no valid license or temporary license issued under this Article.~~

(10a) Has aided or abetted the unlawful practice of psychology by any person not licensed by the Board.

(a1) The Board may deny licensure, and discipline or require remediation and rehabilitation, or any combination thereof, as specified in subsections (a) above and (e) below, upon proof of immoral, dishonorable, unprofessional, or unethical conduct. Immoral, dishonorable, unprofessional, or unethical conduct, has occurred whenever any person who has applied for or has been issued a license under this Article has engaged in any of the following acts or offenses:

(1) Practiced psychology in such a manner as to endanger the welfare of clients or patients;

(2) Harassed or abused, sexually or otherwise, a client, patient, student, supervisee, or trainee;

(3) Exercised undue influence in such a manner as to exploit the client, patient, student, supervisee, or trainee for the financial or other personal advantage or gratification of the psychologist or a third party;

(4) Refused to appear before the Board after having been ordered to do so in writing by the Chair;

(5) Failed to cooperate with or to respond promptly, completely, and honestly to the Board, to credentials committees, or to ethics committees of professional psychological associations, hospitals, or other health care organizations or educational institutions when those organizations or entities have jurisdiction; or failed to cooperate with institutional review boards or professional standards review organizations, when those organizations or entities have jurisdiction.

(6) Failed to maintain a clear and accurate case record which documents the following for each patient or client:

a. Presenting problems, diagnosis, or purpose of the evaluation, counseling, treatment, or other services provided;

b. Fees, dates of services, and itemized charges;

c. Summary content of each session of evaluation, counseling, treatment, or other services, except that summary content need not include specific information that may cause significant harm to any person if the information were released;

d. Test results or other findings, including basic test data; and

e. Copies of all reports prepared;

(7) Failed to competently use, administer, score, or interpret psychological assessment techniques, including interviewing and observation, or provided findings or recommendations which do not accurately reflect the assessment data, or exceed what can reasonably be inferred, predicted, or determined from test, interview, or observational data;

(8) Failed to provide competent diagnosis, counseling, treatment, consultation, or supervision, in keeping with standards of usual and customary practice in this State;

(9) In the absence of established standards, failed to take all reasonable steps to ensure the competence of services;

(10) Failed to cooperate with other psychologists or other professionals to the potential or actual detriment of clients, patients, or other recipients of service, or behaved in ways which substantially impede or impair other psychologists' or other professionals' abilities to perform professional duties; or

(11) Practiced psychology or conducted research outside the boundaries of demonstrated competence or the limitations of education, training, or supervised experience.

(b) A license issued under this Article ~~shall be~~ is automatically suspended by ~~the Board~~ operation of law after failure to renew a license for a period of more than three months after the annual renewal date. The Board may reinstate a license suspended under this subsection upon payment of a special fee of fifteen dollars ($15.00), and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his credentials, or submit to reexamination for reinstatement. Notwithstanding any provision to the contrary, the Board retains full jurisdiction to investigate alleged violations of this Article by any person whose license is suspended under this subsection and, upon proof of any violation of this Article by any such person, the Board may take disciplinary action as authorized by this section.

(c) Except as provided otherwise in this Article, the procedure for revocation, suspension, ~~refusal, or other~~ denial, limitations of the ~~license~~ license, or other disciplinary, remedial, or rehabilitative actions, shall be in accordance with the provisions of Chapter 150B of the General Statutes. The Board is required to provide the opportunity for a hearing under Chapter 150B to any applicant whose license is denied or to whom licensure is offered subject to any restrictions, probation, disciplinary action, remediation, or other conditions or limitations, or to any licensee before revoking, suspending, or restricting a license or imposing any other disciplinary action or

remediation. If the applicant or licensee waives the opportunity for a hearing, the Board's denial, revocation, suspension, or other proposed action becomes final without a hearing having been conducted. Notwithstanding the foregoing, no applicant or licensee is entitled to a hearing for failure to pass an examination. In any proceeding before the Board, in any record of any hearing before the Board, in any complaint or notice of charges against any licensee or applicant for licensure, and in any decision rendered by the Board, the Board may withhold from public disclosure the identity of any clients or patients who have not consented to the public disclosure of treatment by the licensee or ~~psychologist.~~ applicant. The Board may close a hearing to the public and receive in executive session evidence involving or concerning the treatment or delivery of psychological services to a client or a patient who has not consented to the public disclosure of such treatment or services as may be necessary for the protection and rights of such patient or client of the accused ~~psychologist~~ applicant or licensee and the full presentation of relevant evidence. All records, papers and other documents containing information collected and compiled by or on behalf of the Board, as a result of investigations, inquiries or interviews conducted in connection with licensing or disciplinary matters will not be considered public records within the meaning of Chapter 132 of the General Statutes; provided, however, that any notice or statement of charges against any licensee or applicant, or any notice to any licensee or applicant of a hearing in any proceeding, or any decision rendered in connection with a hearing in any proceeding, shall be a public record within the meaning of Chapter 132 of the General Statutes, notwithstanding that it may contain information collected and compiled as a result of such investigation, inquiry, or hearing except that identifying information concerning the treatment or delivery of services to a patient or client who has not consented to the public disclosure of such treatment or services may be deleted; and provided, further, that if any such record, paper or other document containing information theretofore collected and compiled by or on behalf of the Board, as hereinbefore provided, is received and admitted in evidence in any hearing before the Board, it shall thereupon be a public record within the meaning of Chapter 132 of the General Statutes, subject to any deletions of identifying information concerning the treatment or delivery of psychological services to a patient or client who has not consented to the public disclosure of such treatment or services.

(d) A person whose license has been ~~refused or revoked~~ denied or revoked, under the terms of this section may reapply to the Board for licensure after the passage of one calendar year from the date of such revocation. ~~The Board may reinstate a suspended license upon~~

~~payment of a special fee of fifteen dollars ($15.00), and may require that the applicant file a new application, furnish new supervisory reports or references or otherwise update his credentials, or submit to reexamination for reinstatement.~~

(e) Upon proof that an applicant or licensee under this Article has engaged in any of the prohibited actions specified in ~~subsection (a)~~ subsections (a) and (a1) above, the Board may, in lieu of ~~refusal,~~ denial, suspension, or revocation, issue a formal reprimand or formally censure the applicant or licensee, may place the applicant or licensee upon probation with such appropriate conditions upon the continued practice as the Board may deem advisable, ~~or~~ may require remediation or rehabilitation for the applicant or licensee, including care, counseling, or treatment by a professional or professionals designated or approved by the Board, the expense to be borne by the applicant or licensee, may require supervision for the services provided by the applicant or licensee by a licensee designated or approved by the Board, the expense to be borne by the applicant or licensee, may limit or circumscribe the professional psychological services provided by the applicant or licensee with respect to the extent, nature, or location of his practice as the Board deems ~~advisable.~~ advisable, or may discipline and impose any appropriate combination of the foregoing. In addition, the ~~The~~ Board may impose such conditions of probation or restrictions upon continued practice at the conclusion of a period of suspension or as requirements for the restoration of a revoked or suspended license. In lieu of or in connection with any disciplinary proceedings or investigation, the Board may enter into a consent order relative to the discipline, ~~censure, probation~~ supervision, probation, remediation or rehabilitation, or limitation of a licensee or applicant for a license.

(f) The Board may assess costs of disciplinary action against an applicant or licensee found to be in violation of this Article.

(g) When considering the issue of whether or not an applicant or licensee is physically or mentally capable of practicing psychology with reasonable skill and safety to patients or clients, then, upon a showing of probable cause to the Board that the applicant or licensee is not capable of practicing psychology with reasonable skill and safety to patients or clients, the Board may petition a court of competent jurisdiction to order the applicant or licensee in question to submit to a psychological examination by a psychologist to determine psychological status or a physical examination by a physician to determine physical condition, or both. Such psychologist or physician, shall be designated by the court. The expenses of such examinations shall be borne by the Board. Where the applicant or licensee raises the issue of mental or physical competence or appeals a

decision regarding mental or physical competence, the applicant or licensee shall be permitted to obtain an evaluation at the applicant or licensee's expenses. If the Board suspects the objectivity or adequacy of the examination, the Board may compel an examination by its designated practitioners at its own expense.

(h) A licensee may, with the consent of the Board, voluntarily relinquish his license at any time. The Board may delay or refuse the granting of its consent as it may deem necessary in order to investigate any pending complaint, allegation, or issue regarding violation of any provision of this Article by the licensee.

(i) The Board may adopt such rules and regulations as it deems reasonable and appropriate to interpret and implement the provisions of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

H.B. 1046 **CHAPTER 240**

AN ACT TO REQUIRE THE UTILITIES COMMISSION TO OVERSEE A STUDY OF THE FEASIBILITY OF LIMITING DURATION OF COIN-OPERATED AND COINLESS PUBLIC TELEPHONE CALLS.

The General Assembly of North Carolina enacts:

Section 1. The State Utilities Commission shall authorize one or more telephone companies, including at least one of the two largest companies operating in the State, to conduct a pilot program within the State in accordance with this act. The program shall be conducted individually by each of the telephone companies participating in the program, and shall be designed to evaluate the cost-effectiveness, public benefit, and feasibility of implementing a limitation on the duration of local telephone calls placed at coin-operated and coinless public telephones. Participating companies shall alter a certain number of coin-operating and coinless public telephones in one of the following manners: a) so that the telephones automatically terminate the connection on a local call after a period of between seven and ten minutes; or b) so that the telephones time local calls in predetermined increments with a local charge applied to each increment. The number of telephones to be altered, the number of minutes after which the cut-off occurs, and the increments of time shall be determined by the participating companies. The number of telephones to be altered shall be determined by identifying the number necessary to reliably evaluate the cost-effectiveness and usefulness of the

program. Participating telephone companies shall provide to the Utilities Commission upon request all information necessary to evaluate the program.

Sec. 2. The length of the pilot program provided for in Section 1 of this act shall be at least six months but no longer than one year and shall be completed no later than December 31, 1992.

Sec. 3. The State Utilities Commission shall report the results and conclusions from the program to the Joint Legislative Utility Review Committee within three months of the completion of the pilot program, but not later than March 1, 1993.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 6th day of June, 1991.

S.B. 165 **CHAPTER 241**

AN ACT TO PROVIDE FOR THE DEPARTMENT OF HUMAN RESOURCES, DIVISION OF AGING, TO ADMINISTER A HOME AND COMMUNITY CARE BLOCK GRANT FOR OLDER ADULTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.1(a) is amended by adding a new subdivision to read:

"(10) To administer a Home and Community Care Block Grant for older adults, effective July 1, 1992. The Home and Community Care Block Grant shall be comprised of applicable Older Americans Act funds, Social Services Block Grant funding in support of the Respite Care Program (G.S. 143B-181.10), State funds for home and community care services administered by the Division of Aging, portions of the State In-Home and Adult Day Care funds (Chapter 1048, 1981 Session Laws) administered by the Division of Social Services which support services to older adults, and other funds appropriated by the General Assembly as part of the Home and Community Care Block Grant. Funding currently administered by the Division of Social Services to be included in the block grant will be based on the expenditures for older adults at a point in time to be mutually determined by the Divisions of Social Services and Aging. The total amount of Older Americans Act funds to be included in the Home and Community Care Block Grant and the matching rates for the block grant shall be established by the Department of

Human Resources, Division of Aging. Allocations made to counties in support of older adults shall not be less than resources made available for the period July 1, 1990, through June 30, 1991, contingent upon availability of current State and federal funding."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 190 **CHAPTER 242**

AN ACT TO INCORPORATE THE TOWN OF MOMEYER IN NASH COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A charter for the Town of Momeyer is enacted to read:

"CHARTER OF THE TOWN OF MOMEYER.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and corporate powers.* The inhabitants of the Town of Momeyer are a body corporate and politic under the name 'Town of Momeyer.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. *Town boundaries.* Until modified in accordance with the law, the boundaries of the Town of Momeyer are as follows:

BEGINNING at a point in the centerline of the Nash County Railroad, said point being located North 78 degrees 25 minutes East 62.40 feet from the centerline of Secondary Road No. 1909 and said point having North Carolina Grid Coordinates N=805,614.1506 feet, E=2,284,717.8317 feet and runs thence South 11 degrees 35 minutes East 1500.00 feet to a point cornering, thence South 78 degrees 25 minutes West 8000.00 feet to a point cornering, thence North 11 degrees 35 minutes West (1500.00 feet to a point in the centerline of the Nash County Railroad) a total distance of 4000.00 feet to a point cornering, thence North 78 degrees 25 minutes East 8000.00 feet to a point cornering, thence South 11 degrees 35 minutes East 2500.00 feet to the BEGINNING, containing 734.62 acres as shown on survey and map entitled 'Proposed Town Limits Town of Momeyer' by McIntyre, Chamblee and Strickland Land Surveying dated January 22, 1991, using North Carolina Grid Meridian 1927.

"CHAPTER III.
"GOVERNING BODY.

"Sec. 3.1. *Structure of governing body; number of members.* The governing body of the Town of Momeyer is the Town Council, which has four members, and the Mayor.

"Sec. 3.2. *Manner of electing Council.* The qualified voters of the entire Town elect the members of the Council.

"Sec. 3.3. *Term of office of Council members.* Members of the Council are elected to four-year terms.

"Sec. 3.4. *Election of Mayor; term of office.* The qualified voters of the entire Town elect the Mayor. The Mayor is elected to a four-year term of office.

"CHAPTER IV.
"ELECTIONS.

"Sec. 4.1. *Conduct of Town elections.* Town officers shall be elected on a nonpartisan basis and the results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.
"ADMINISTRATION.

"Sec. 5.1. *Town to operate under Mayor-Council plan.* The Town of Momeyer operates under the Mayor-Council plan as provided in Chapter 160A, Article 7, Part 3, of the General Statutes."

Sec. 2. Following preclearance of the incorporation by the U.S. Department of Justice as required by the Voting Rights Act of 1965, as amended and until the organizational meeting of the Town Council of Momeyer following the first municipal election for the Town, Frederick Hinton shall serve as Mayor, and Eloise Bass, George Alma Edwards, Ronnie Pace, and Nelson Puckett shall serve as members of the Town Council. Provided, however, if the U.S. Department of Justice has not precleared the incorporation prior to the opening of the filing period for the 1991 municipal election, the Nash County Board of Elections shall reschedule the election, as appropriate.

Sec. 3. From and after the effective date of this act, the citizens and property in the Town of Momeyer shall be subject to municipal taxes levied for the year beginning July 1, 1991, and for that purpose the Town shall obtain from Nash County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1991. The Town may adopt a budget ordinance for fiscal year 1991-92 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1991-92, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with

the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1991.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 214 **CHAPTER 243**

AN ACT CONCERNING ANNEXATION OF CERTAIN PROPERTY BY THE TOWN OF HOLLY SPRINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.1(b)(5) does not apply to the Town of Holly Springs for any noncontiguous annexation within the following area:

Beginning at a point in the centerline of N.C.S.R. No. 1115 said point being located approximately 100 feet west from the centerline intersection of N.C.S.R. No. 1116 and N.C.S.R. No. 1115; running thence with the centerline of N.C.S.R. No. 1115 the following courses and distances along the centerline of said road south 78-08-07 west 137.55 feet, south 81-04-37 west 148.02 feet, south 82-16-07 west 180.77 feet, south 82-46-37 west 418.79 feet, south 83-02-57 west 247.15 feet to a point in said centerline, the southeast corner of Mary Francis Ragan; thence with her line north 07-23-33 west 430.00 feet to her northeast corner; thence her northern line south 82-36-27 west 200.00 feet to a point being the southeast corner of D. Adam Young, Jr.; thence as his line north 07-23-33 west 71.00 feet to his northeast corner; thence continuing with his northern line south 82-47-12 west 458.11 feet to the northeast corner of S.W. Buchanan; thence as Buchanan's northern line north 88-28-33 west 842.29 feet to his northwest corner; thence as his western line south 00-40-02 west 634.50 feet to a point in the centerline of N.C.S.R. No. 1115, it being Buchanan's southeast corner; thence with the centerline of N.C.S.R. No. 1115 in a southwesterly direction 1621 feet more or less to a point in said centerline, it being the southeast corner of J.R. Weaver and others; thence as their line north 01-06-48 east 188.08 feet to a point, it being the northeast corner of J.R. Weaver and others; thence as their northern line north 87-36-28 west 1016.70 feet to their north west corner; thence as the western line of Weaver and others south 06-42-23 west 471.32 feet to the northeast corner of Clifton L. Barbour; thence as his line north 88-39-14 west 940.10 feet to the northeast corner of Martha Hare Sexton; thence as her line north 88-45-36 west 1370.48 feet to a point in the eastern line of Alex L. McLean; thence as his eastern line north 00-16-25 west 444.60

feet to his northeast corner; thence as his northern line south 82-30-30 west 649.18 feet to a point in the line of Carolina Power and Light Company, it being the northwest corner of Alex L. McLean; thence the following courses and distances with Carolina Power and Light Company north 01-08-24 west 292.85 feet, north 00-14-06 west 932.56 feet, south 86-18-15 east 1992.32 feet, north 44-34-08 east 395.80 feet, north 53-45-32 west 30.00 feet, north 85-54-39 west 82.68 feet, north 34-28-07 west 105.95 feet, north 54-54-16 west 100.02 feet, north 41-04-42 west 82.00 feet, north 63-15-09 west 42.44 feet, north 03-03-43 west 494.59 feet, north 52-53-19 west 128.38 feet, north 02-12-32 east 1616.36 feet to a southeast corner of Romie Burt with Carolina Power and Light Company; thence with another line of Carolina Power and Light Company south 85-55-07 east 1048.74 feet to a western corner of Floice B. Edwards; thence as her western line and with the western lines of Howard L. Beckwith, Jr. and the Howard L. Beckwith heirs south 01-12-36 east 713.86 feet to the northwest corner of Colin Hobby; thence as his western line south 25-33-46 west 1557.31 feet to Hobby's southwest corner; thence as Hobby's southern line south 87-46-27 east 1849.36 feet to his southeast corner; thence as his eastern line north 01-06-48 east 1438.07 feet to his northeast corner in the southern line of Carolina Power and Light Company; thence with the following lines of Carolina Power and Light Company south 87-38-47 east 746.75 feet, north 04-14-16 west 1072.40 feet, north 00-12-03 east 1054.81 feet, south 88-12-53 east 1103.68 feet, south 00-19-40 west 362.27 feet, south 87-09-43 east 1123.49 feet, south 87-25-37 east 577.33 feet, south 24-01-23 west 1903.81 feet, south 87-24-14 east 387.94 feet to the northwest corner of Richard Fehlner; thence the following courses and distance with the western lines of said Fehlner south 01-49-22 west 369.47 feet, south 52-08-29 west 575.84 feet, south 38-12-22 east 688.54 feet to a western corner with Mary Francis Ragan; thence as her western lines south 01-50-14 west 24.46 feet, south 65-46-27 west 45.61 feet, south 42-52-23 east 461.45 feet; thence continuing with the western line of Mary Francis Ragan and the western line of Madge Young heirs south 45-31-23 east 502.87 feet to Madge Young heirs corner with M.C. Collins; thence with the western line of M.C. Collins south 01-18-37 west 8.22 feet and south 55-41-23 west 199.50 feet to a point inside the northern right of way of N.C.S.R. No. 1115; thence north 77-18-37 east 265.29 feet to a point near the northern right of way of N.C.S.R. No. 1115; thence south 01-18-37 west 25.78 feet to the point and place of beginning; and being Wake County Tax Map Parcels: 779-04, 798-01, 798-02, 779-11, 798-52, 779-20, 779-07, 779-10, 779-16.

Sec. 2. This act is effective upon ratification but applies only to annexation ordinances adopted before July 1, 1993.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 537 **CHAPTER 244**

AN ACT TO MODIFY THE DISTRIBUTION OF THE PROFITS FROM THE CITY OF STATESVILLE ABC SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Section 6.3(2) of the Charter of the City of Statesville, being Chapter 289 of the 1977 Session Laws, reads as rewritten:

"(2) Twenty-five percent (25%) shall be turned over to the the Board of Education of the ~~City of Statesville.~~ Iredell-Statesville Schools."

Sec. 2. Section 2 of Chapter 768 of the 1989 Session Laws is repealed.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 555 **CHAPTER 245**

AN ACT TO INCREASE THE PENALTIES FOR VIOLATION OF TOWN OF NORTH TOPSAIL BEACH OR ONSLOW COUNTY ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 511 of the 1979 Session Laws reads as rewritten:

"Sec. 2. This act shall apply to Onslow County, the Town of North Topsail Beach, and the City of Jacksonville only."

Sec. 3. This act becomes effective 60 days after ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 623 **CHAPTER 246**

AN ACT TO MAKE VARIOUS AMENDMENTS TO LAWS APPLICABLE IN ORANGE AND CHATHAM COUNTIES.

The General Assembly of North Carolina enacts:

TITLE I. ORANGE COUNTY.

Part 1. Orange County Land Use and Development.

Section 1. The first paragraph of G.S. 153A-331(a), as applicable to Orange County because of Sections 17 and 17.1 of Chapter 460 of the 1987 Session Laws, reads as rewritten:

"A subdivision control ordinance may provide for the orderly growth and development of the county; for the coordination of streets and highways within proposed subdivisions with existing or planned streets and highways and with other public facilities; for the dedication or reservation of recreation areas serving residents of the ~~immediate neighborhood within the~~ subdivision and residents of the immediate area within which the subdivision is located and of rights-of-way or easements for street and utility purposes including the dedication of rights-of-way pursuant to G.S. 136-66.10 or G.S. 136-66.11; and for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions essential to public health, safety, and the general welfare. The ordinance may include requirements that the final plat show sufficient data to determine readily and reproduce accurately on the ground the location, bearing, and length of every street and alley line, lot line, easement boundary line, and other property boundaries, including the radius and other data for curved property lines, to an appropriate accuracy and in conformity with good surveying practice. A subdivision control ordinance may provide that a developer may be required to provide funds to the county whereby the county may acquire and develop recreational land or areas to serve the development or subdivision, including the purchase of land which may be used to serve more than one subdivision or development within the immediate area. A subdivision control ordinance may define immediate area by reference to a comprehensive system of parks and recreation areas within the county."

Sec. 2. G.S. 153A-340, as applicable to Orange County because of Sections 18 and 18.1 of Chapter 460 of the 1987 Session Laws, is amended by adding a new subsection (a1) to read:

"(a1) Density bonus. For the purposes of increasing the availability of housing for persons of low and moderate income, and thereby promoting the public health, safety and welfare, a county may grant a density bonus or provide other incentives of equivalent financial value to a developer of housing within the county if the developer agrees:

(1) To construct at least 40 percent (40%) of the total duplex or multifamily units of a housing development for rent to persons and families earning less than sixty percent (60%) of Orange County median income, adjusted for family size,

as determined by the U.S. Department of Housing and Urban Development (hereinafter 'median income');

(2) To construct at least twenty percent (20%) of the total duplex or multifamily units of a housing development for rent to families earning less than fifty percent (50%) of median income;

(3) To construct the greater of two or all of the bonus of the total single family residential units of a housing development for sale to persons and families earning less than eighty percent (80%) of the median income; or

(4) To donate land to Orange County to be used for the purpose of the development of affordable housing, provided that the land donated must have suitable soils or access to public water and sewer and be sufficient in size for the greater of two or all the bonus units.

For the purposes of this subsection, 'density bonus' means a density increase of at least twenty-five percent (25%) over the otherwise maximum allowable residential density under the applicable zoning classification. The density bonus shall not be included when determining the number of housing units that constitutes the minimum required to be made available to low and moderate income housing."

Sec. 3. G.S. 153A-342 reads as rewritten:

"*§ 153A-342. Districts; zoning less than entire jurisdiction.*

A county may divide its territorial jurisdiction into districts of any number, shape, and area that it may consider best suited to carry out the purposes of this Part. Within these districts a county may regulate and restrict the erection, construction, reconstruction, alteration, repair, or use of buildings, structures, or land. Such districts may include, but shall not be limited to, general use districts, in which a variety of uses are permissible in accordance with general standards; overlay districts, in which additional requirements are imposed on certain properties within one or more underlying general or special use districts; and special use districts or conditional use districts, in which uses are permitted only upon the issuance of a special use permit or a conditional use permit. Property may be placed in a special use district or conditional use district only in response to a petition by the owners of all the property to be included. Except as authorized by the foregoing, and by G.S. 153A-340, all regulations shall be uniform for each class or kind of building throughout each district, but the regulations in one district may differ from those in other districts.

A county may determine that the public interest does not require that the entire territorial jurisdiction of the county be zoned and may designate one or more portions of that jurisdiction as a zoning area or

areas. A zoning area must originally contain at least 640 acres and at least 10 separate tracts of land in separate ownership and may thereafter be expanded by the addition of any amount of territory. A zoning area may be regulated in the same manner as if the entire county were zoned, and the remainder of the county need not be regulated."

Sec. 4. G.S. 160A-407 reads as rewritten:

"§ *160A-407. Definitions.*

(a) For the purpose of this Part an 'open space' or 'open area' is any space or area (i) characterized by great natural scenic beauty ~~or~~ (ii) whose existing openness, natural condition, or present state of use, if retained, would enhance the present or potential value of abutting or surrounding urban development, or would maintain or enhance the conservation of natural or scenic ~~resources.~~ resources, (iii) that would assure, preserve, and protect watershed areas as a basic asset and natural resource so as to prevent the impairment of drinking water supplies, or (iv) that would assure, preserve, protect, and maintain the purity and the quality of reservoir waters and would promote the health, safety, and welfare of the people of the State.

(b) For the purposes of this Part 'open space' or 'open area' and the 'public use and enjoyment' of interests or rights in real property shall also include open space land and open space uses. The term 'open space land' means any undeveloped or predominantly undeveloped land in an urban area that has value for one or more of the following purposes: (i) park and recreational purposes, (ii) conservation of land and other natural resources, ~~or~~ (iii) historic or scenic ~~purposes.~~ purposes, (iv) farmland, or (v) conservation of watershed areas and drinking water supplies to prevent the impairment thereof and assure, preserve, protect, and maintain the purity and quality of reservoir waters. The term 'open space uses' means any use of open space land for (i) park and recreational purposes, (ii) conservation of land and other natural resources, ~~or~~ (iii) historic or scenic ~~purposes.~~ purposes, (iv) farmland, or (v) conservation of watershed areas and drinking water supplies to prevent the impairment thereof and assure, preserve, protect, and maintain the purity and quality of reservoir waters."

Sec. 5. G.S. 153A-121 is amended by adding a new subsection to read:

"(d) A county may by ordinance require the owners and the operators of community systems of sewage collection, treatment, and disposal, to provide the county with performance bonds, letters of credit, or certificates of deposit in amounts sufficient to cover (i) the initial design, installation, and performance of the system to design standards; (ii) system component replacement; and (iii) system

maintenance. A community system of sewage collection, treatment, and disposal is one which serves more than one user and is not owned or operated by a local government unit or a North Carolina water and sewer authority."

Part 2. Orange County Civil Rights Ordinance.

Sec. 6. Orange County Civil Rights Ordinance. (a) The Board of Commissioners of Orange County may adopt an ordinance (hereinafter "Civil Rights Ordinance" or "Human Rights Ordinance") designed: to promote equal treatment of all individuals; to discourage discrimination based on religion, age, sex, race, disability, or marital status; to help residents find ways to meet and solve problems arising from discrimination by use of public meetings, counseling, mediation where appropriate, and the civil and criminal courts as necessary; to continue to protect the lawful interests of residents and to recognize the dignity of each person so as to make available to the county the full productive and creative capacities of its citizens; to prevent public and domestic strife, crime and unrest; to preserve the public health, safety and general welfare; to promote the policy within Orange County that all individuals, child and adult, female and male, shall have equal rights throughout Orange County and every place subject to its jurisdiction; to carry out in Orange County the policies provided for in various federal rules, regulations, and laws prohibiting discrimination in housing, employment, places of public accommodation, public transportation, voting and education; and to address the deprivation of the free exercise or enjoyment of any right, privilege, or immunity secured by the Constitution of North Carolina, not inconsistent with the Constitution of the United States.

(b) The Board of Commissioners of Orange County may, by ordinance or otherwise, create an agency or commission (hereinafter "agency") of Orange County to assist in the enforcement of an Orange County Civil Rights or Human Rights Ordinance and to receive, initiate, investigate, seek to conciliate, hold hearings on and pass upon complaints, to mediate alleged violations of the ordinance, to issue orders against persons it finds, after notice and hearing, to have violated the ordinance, and to seek court enforcement of its orders.

(c) Judicial review of agency orders shall be in accordance with Article 4 of Chapter 150B of the General Statutes (The Administrative Procedure Act). Provided, however, that all petitions for judicial review shall be filed in the Superior Court of Orange County. The term "agency," whenever used in Article 4 of Chapter 150B of the General Statutes, shall mean the agency as authorized or created by the Board of Commissioners of Orange County by authority of this section.

(d) An ordinance adopted pursuant to this section applies to any part of Orange County not within a municipally incorporated city, town, or village. The governing board of a city, town, or village within Orange County may, by resolution, permit an Orange County ordinance adopted pursuant to this section to be applicable within its corporate boundaries. A city, town, or village may, by resolution, withdraw its permission to enforce such an ordinance. If it does so, it shall give written notice to Orange County of its withdrawal of permission. Thirty days after the date Orange County receives the permission withdrawal notice, the county ordinance ceases to be applicable within the city, town, or village.

(e) This section applies only to Orange County.

Part 3. Orange County Hunting and Fishing Regulation.

Sec. 7. Section 2 of Chapter 651 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act applies only to ~~Alamance~~ Alamance, Orange, and Rockingham Counties."

Part 4. Orange County School Payday.

Sec. 8. Notwithstanding G.S. 115C-302(a) and G.S. 115C-316(a), the Orange County Board of Education may pay its academic teachers, occupational education teachers, guidance counselors, assistant principals, and other instructional personnel employed for less than 12 months of the school year on the fifteenth day of each month during which they are employed.

TITLE II. CHATHAM COUNTY.

Sec. 9. Possession and Use of Firearms in Chatham County. (a) It is unlawful for any person to hunt with a firearm or bow and arrow, or to possess any firearm or bow and arrow, while on the land of another unless he has, on his person, a paper writing dated and signed by the owner or lessee of the land granting the person permission to hunt or possess a firearm or bow and arrow while on the land. If the land is owned by or leased to a club, the permission must be signed by the club president or other chief executive, by whatever name known. If the land is owned by or leased to a corporation, the permission must be signed by the president or vice-president of the corporation, or the authorized designee of the president or vice-president. Permission shall not be valid for a period in excess of one year, but may be valid for any shorter period stated in the permission. The written permission shall be displayed upon request to any law enforcement officer authorized to enforce this section.

(b) Definitions. The following definitions apply to this section:

(1) To hunt - To take wild animals or wild birds.

(2) To take - All operations during, immediately preparatory to, and immediately subsequent to an attempt, whether successful or not, to capture, kill, pursue, hunt, or otherwise harm or reduce to possession any wild animal or wild bird.

(c) It is unlawful for any person to possess a loaded firearm on the land of another while under the influence of an impairing substance. For purposes of this subsection, a person is under the influence of an impairing substance when he has consumed a sufficient quantity of any impairing substance to cause him to lose the normal control of his bodily or mental faculties, or both, to such an extent that there is an appreciable impairment of either or both of these faculties.

(d) It is unlawful for any parent, guardian, or person standing *in loco parentis*, to knowingly permit his child under the age of 16 years to have the possession, custody, or use in any manner whatever, of a firearm, whether such weapon is loaded or unloaded, except when the child is under the supervision of the parent, guardian, or person standing *in loco parentis*. It is unlawful for any person other than a parent, guardian, or person standing *in loco parentis*, to knowingly furnish a child under the age of 16 years any weapon enumerated herein without first obtaining permission of the child's parent or guardian, or of the person standing *in loco parentis* to the child.

(e) Violation of any provision of this section is a misdemeanor punishable by a fine of not less than two hundred fifty dollars ($250.00), by imprisonment for a period not to exceed two years in the discretion of the court, or by both.

(f) Any person convicted of violating this section shall be ordered by the presiding judge to complete a hunter safety course as prescribed by G.S. 113-270.1A.

(g) This section is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by other law enforcement officers with general subject matter jurisdiction.

(h) This section applies to Chatham County only.

Sec. 10. Sections 1 through 6 and Section 8 of this act apply to Orange County only. Section 8 of this act becomes effective August 1, 1991. Section 9 of this act becomes effective October 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 598 **CHAPTER 247**

AN ACT TO PROHIBIT THE RECKLESS USE OF FIREARMS IN PASQUOTANK COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Any person who uses a firearm:

(1) Carelessly and heedlessly, and in willful or wanton disregard of the rights or safety of others; or

(2) Without due caution and circumspection, and in a manner so as to endanger or be likely to endanger any person or property;

is guilty of the reckless use of a firearm. Any discharge of a firearm that poses a hazard to any person or to property, or any discharge of a firearm that results in a projectile crossing the property of another person without his or her permission, constitutes a violation of this section.

Sec. 2. Violation of this act is a misdemeanor punishable by a fine not to exceed fifty dollars ($50.00) or by imprisonment not to exceed 30 days, or by both, in the discretion of the court.

Sec. 3. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 4. This act applies only to Pasquotank County.

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 638 **CHAPTER 248**

AN ACT EXTENDING THE EXTRATERRITORIAL JURISDICTION OF THE TOWN OF MONTREAT.

The General Assembly of North Carolina enacts:

Section 1. In addition to the authority granted in G.S. 160A-360, the Town of Montreat may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes in an area north of the Town's corporate limits, that area being bounded on the west by the western ridge line of the Flat Creek Basin, beginning at Brushy Knob at the western boundary of the existing Town limits; and bounded on the east by a line 500 feet east of the eastern ridge line of the Flat Creek Basin, beginning at Long Gap at the eastern boundary of the existing Town limits; and extending to the north to the point at which the eastern and western boundaries of the area as described

above intersect, at Graybeard Mountain, said area to include the summit and entirety of Graybeard Mountain.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 689 **CHAPTER 249**

AN ACT TO REDISTRICT THE MADISON COUNTY BOARD OF EDUCATION, CHANGE THE MANNER OF ELECTION FROM PARTISAN TO NONPARTISAN, CHANGE THE TIME OF TAKING OFFICE FROM APRIL TO DECEMBER, AND PROVIDE FOR THE SEPARATE ELECTION OF THE CHAIRMAN, ALL SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. The Board of Education of Madison County consists of four members and a chairman, all of whom have full voting powers.

Sec. 2. (a) For the purpose of electing the four members of the Board of Education, Madison County is divided into two districts. In 1994, each district shall elect two members. In 1994 in each district, the person receiving the highest number of votes is elected to a four-year term, and the person receiving the next highest number of votes is elected to a two-year term. In 1996 and biennially thereafter, one member is elected from each district for a four-year term.

(b) Candidates and members must be residents of the district from which they seek election and serve, and only the qualified voters of the district shall vote on the election of the two members apportioned to the district.

(c) District 1 consists of Township 3 Mars Hill, Township 4 Beech Glenn, Township 7 Ebbs Chapel, and Township 10 Grapevine. District 2 consists of Township 1 Marshall, Township 2 Laurel, Township 5 Walnut, Township 6 Hot Springs, Township 8 Spring Creek, Township 9 Sandy Mush, and Township 11 Revere Rice Cove.

(d) Townships as described in this act are in accordance with the boundaries reported by the 1990 decennial Federal Census.

Sec. 3. The chairman of the Board of Education of Madison County shall be elected in 1994 and quadrennially thereafter for a four-year term at large by all the qualified voters of Madison County. In the case of a vacancy in the office of chairman, the remaining members of the Board shall appoint a person as chairman who resides in the same district that the chairman resided in at the time of his election. If the members do not make an appointment within 30 days

of the occurrence of the vacancy, the responsibility of making the appointment shall be that of the Senior Resident Superior Court Judge for Madison County.

Sec. 4. Notwithstanding the provisions of G.S. 115C-37, the Madison County Board of Education shall be elected on a nonpartisan basis at the time of the primary election in 1994 and quadrennially thereafter. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan election and runoff election method shall be used with the results determined as provided in G.S. 163-293, except that the runoff shall be held on the date provided by G.S. 163-111(e). Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 5. The terms of office of the members and chairman of the Madison County Board of Education commence on the first Monday in December of the year of their election.

Sec. 6. Except that their terms shall expire on the first Monday in December of 1994, this act does not affect the terms of office of current members of the Madison County Board of Education.

Sec. 7. The procedure for filling vacancies in membership on the Board of Education for seats elected in 1990 is not affected by this act. The remaining members of the Board shall fill a vacancy in the seat of a Board member elected in or after 1994 by appointing a resident of the same district in which the predecessor resided.

Sec. 8. Chapter 1044, Session Laws of 1967, is repealed.

Sec. 9. Sections 1 through 8 of this act shall become effective only if approved by the qualified voters of Madison County in a referendum to be conducted by the Madison County Board of Elections on the date for the regular statewide general election in November of 1992. The question on the ballot shall be:

"[ ] FOR nonpartisan election of the Madison County Board of Education from two districts of two members each, separate election of the chairman by all the voters of the county, with those elected taking office in December of the year of their election.

[ ] AGAINST nonpartisan election of the Madison County Board of Education from two districts of two members each, separate election of the chairman by all the voters of the county, with those elected taking office in December of the year of their election."

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 735 **CHAPTER 250**

AN ACT TO AUTHORIZE BUNCOMBE COUNTY TO ADOPT "PREDEVELOPMENT ORDINANCES".

The General Assembly of North Carolina enacts:

Section 1. Chapter 970 of the 1986 Session Laws is amended by deleting the phrase "HAYWOOD AND HENDERSON COUNTIES" from the title, and substituting the phrase "BUNCOMBE, HAYWOOD, AND HENDERSON COUNTIES".

Sec. 2. Section 7 of Chapter 970 of the 1986 Session Laws is amended by deleting the phrase "Haywood and Henderson Counties." and substituting the phrase "Buncombe, Haywood, and Henderson Counties.".

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 811 **CHAPTER 251**

AN ACT TO CHANGE THE TERM OF OFFICE OF THE MADISON COUNTY TAX COLLECTOR FROM TWO YEARS TO FOUR YEARS BEGINNING IN 1992.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 100 of the 1951 Session Laws is amended as follows:

(1) By deleting the phrase "1952" each time it appears and substituting "1992";

(2) By deleting the phrase "biennially" and substituting "quadrennially"; and

(3) By deleting the phrase "two (2) years" and substituting the phrase "four years".

Sec. 2. This act applies only to Madison County. This act does not affect the existing term of office.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

H.B. 816 **CHAPTER 252**

AN ACT TO CREATE A NEW OFFENSE OF THIRD DEGREE TRESPASS IN DAVIDSON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. (a) Offense. -- A person commits the offense of third degree trespass if, without written authorization, he enters or remains on the premises of another for the purpose of hunting, fishing, trapping, or operating an all terrain vehicle.

(b) Classification. -- Third degree trespass is a misdemeanor punishable by imprisonment for up to 30 days, a fine up to two hundred dollars ($200.00), or both.

Sec. 2. This act applies only to Davidson County.

1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 10th day of June, 1991.

S.B. 486 **CHAPTER 253**

AN ACT TO AUTHORIZE THE ALEXANDER COUNTY BOARD OF EDUCATION TO REDISTRICT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-37 is amended by adding new subsections to read:

"(i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. In establishing district boundaries, the local board of education shall use data derived from the most recent federal census.

(j) Any new districting plan adopted under subsection (i) of this section may include a change in the number of members of the board of education, may terminate the terms of all the members of the board at the next time any terms expire, so that all the members may be elected at once under the new districting plan, and may provide for the length and staggering of the terms of the members to be elected at the next election.

(k) Any action taken under subsections (i) or (j) of this section is effective only if approved by vote of all the members of the board of education in office at the time of the vote."

Sec. 2. This act applies only to the Alexander County Board of Education.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

S.B. 491 **CHAPTER 254**

AN ACT TO CHANGE THE MANNER OF ELECTION OF THE CLAY COUNTY BOARD OF EDUCATION FROM PARTISAN TO NONPARTISAN.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37, the Clay County Board of Education shall be elected on a nonpartisan basis at the time of the general election in each even-numbered year as terms expire. The names of the candidates shall be printed on the ballot without reference to any party affiliations. The nonpartisan primary and election method shall be used with the results determined as provided in G.S. 163-294, and the primary shall be held on the date provided by G.S. 163-1 for county primaries. Except as provided by this act, the election shall be conducted in accordance with the applicable provisions of Chapters 115C and 163 of the General Statutes.

Sec. 2. This act does not affect the terms of office of current members of the Clay County Board of Education.

Sec. 3. Vacancies in membership of the Clay County Board of Education elected under this act shall be filled by appointment made by the remaining members.

Sec. 4. The Board of Education of Clay County consists of five members elected by the qualified voters of Clay County for four-year terms. As the terms of present members expire, their successors shall be elected.

Sec. 4.1. The other sections of this act shall only become effective if approved by the qualified voters of Clay County in a referendum to be held at the same time as the Statewide general election in November of 1992.

The referendum shall be conducted by the Clay County Board of Elections in accordance with Chapter 163 of the General Statutes, and the question on the ballot shall be:

"[ ] FOR changing the manner of Election of the Clay County Board of Education from partisan to nonpartisan.

[ ] AGAINST changing the manner of Election of the Clay County Board of Education from partisan to nonpartisan."

If a majority of the qualified voters vote in favor of the question, it shall become effective beginning with the 1994 election.

Sec. 6. Except as to the manner of filling vacancies for terms of office to expire in 1992 or 1994, Chapter 157 of the 1975 Session Laws is repealed as to Clay County.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

S.B. 639 **CHAPTER 255**

AN ACT TO MAKE IT CLEAR THAT A POWER OF SALE INCLUDED IN A LEASEHOLD MORTGAGE OR LEASEHOLD DEED OF TRUST IS ENFORCEABLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-21.1 reads as rewritten:

" *45-21.1. Definition.*

As used in this Article, 'sale' means ~~only~~ a sale of real property or a sale of any leasehold interest created by a lease of real property pursuant to an express power of sale contained in a ~~mortgage or~~ mortgage, deed of ~~trust.~~ trust, leasehold mortgage, or leasehold deed of trust."

Sec. 2. This act is effective upon ratification and applies to all recorded instruments containing a power of sale, whether recorded before or after the effective date of this act.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 423 **CHAPTER 256**

AN ACT TO CLARIFY THE MEANING OF "REPAIR" OF A SANITARY SEWAGE SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-334 is amended by adding two new subdivisions to read:

"(9a) 'Repair' means the extension, alteration, replacement, or relocation of existing components of a sanitary sewage system.

(3a) 'Maintenance' means normal or routine maintenance including replacement of broken pipes, cleaning, or adjustment to an existing sanitary sewage system."

Sec. 2. G.S. 130A-336 reads as rewritten:

" *130A-336. Improvement permit required.*

(a) No person shall commence or assist in the construction, ~~location~~ location, or relocation of a residence, place of ~~business~~ business, or place of public assembly in an area not served by an approved sanitary sewage system unless an improvement permit is obtained from the local health department. This requirement shall not apply to a residence exhibited for sale or stored for later sale and intended to be located at another site after sale.

(b) The local health department shall issue an improvement permit authorizing work to proceed and the installation or repair of a sanitary sewage system when it has determined after a field investigation that the system can be installed and operated in compliance with ~~the rules and this Article.~~ this Article and rules adopted pursuant to this Article. No person shall commence or assist in the installation, construction, or repair of a sanitary sewage system, other than a connection to an approved public or community sewage ~~system, or a repair of a sanitary sewage system, which repair is not an expansion or improvement of the system and which is made entirely within the property of the person making or contracting for the repair,~~ system or maintenance of a sanitary sewage system, unless ~~the~~ an improvement permit has been obtained from the local health department. The Department and the local health department may impose conditions on the issuance of an improvement permit."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 427 **CHAPTER 257**

AN ACT TO CLARIFY THE ROLE OF THE ATTORNEY GENERAL'S OFFICE IN COMMITMENT HEARINGS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-270(f) reads as rewritten:

"(f) The Attorney General may employ four attorneys, one to be assigned by him full-time to each of the State facilities for the mentally ill, to represent the State's interest at commitment hearings, rehearings and supplemental hearings held under this Article at the State facilities for respondents admitted to those facilities pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321 and to provide liaison and consultation services concerning these matters. These attorneys are subject to Chapter 126 of the General Statutes and shall also perform additional duties as may be assigned by the Attorney General. The attorney employed by the Attorney General in accordance with G.S. 114-4.2B shall represent the State's interest at

commitment hearings, rehearings and supplemental hearings held ~~at~~ for respondents admitted to the University of North Carolina Hospitals at Chapel Hill ~~under this Article.~~ pursuant to Part 3, 4, 7, or 8 of this Article or G.S. 15A-1321."

Sec. 2. G.S. 122C-268(b) reads as rewritten:

"(b) The attorney, who is a member of the staff of the Attorney General assigned to one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill, shall represent the State's interest at commitment hearings, rehearings, and supplemental hearings held for respondents admitted pursuant to this Part or G.S. 15A-1321 at the facility to which he is ~~assigned under this Part.~~ assigned.

In addition, the Attorney General may, in his discretion, designate an attorney who is a member of his staff to represent the State's interest at any commitment hearing, rehearing, or supplemental hearing held in a place other than at one of the State's facilities for the mentally ill or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 440 **CHAPTER 258**

AN ACT TO ALLOW REPRESENTATIVES DESIGNATED BY THE COUNTY DIRECTOR OF SOCIAL SERVICES TO ACT ON BEHALF OF THE COUNTY DIRECTOR OF SOCIAL SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-14 reads as rewritten:

"§ *108A-14. Duties and responsibilities.*

(a) The director of social services shall have the following duties and responsibilities:

(1) To serve as executive officer of the board of social services and act as its secretary;

(2) To appoint necessary personnel of the county department of social services in accordance with the merit system rules of the State Personnel Commission;

(3) To administer the programs of public assistance and social services established by this Chapter under pertinent rules and regulations;

(4) To administer funds provided by the board of commissioners for the care of indigent persons in the

county under policies approved by the county board of social services;

(5) To act as agent of the Social Services Commission and Department of Human Resources in relation to work required by the Social Services Commission and Department of Human Resources in the county;

(6) To investigate cases for adoption and to supervise adoptive placements;

(7) To issue employment certificates to children under the regulations of the State Department of Labor;

(8) To supervise domiciliary homes for aged or disabled persons under the rules and regulations of the Social Services Commission.

(9) To assist and cooperate with the Department of Correction and their representatives;

(10) To act in conformity with the provisions of Article 7, Chapter 35 of the General Statutes with regard to sterilization of mentally ill and mentally retarded persons;

(11) To investigate reports of child abuse and neglect and to take appropriate action to protect such children pursuant to the Child Abuse Reporting Law, Article 44 of Chapter 7A;

(12) To accept children for placement in foster homes and to supervise placements for so long as such children require foster home care; ~~and~~

(13) To respond by investigation ~~and action to a request for written consent to the plan of separation of a child under six months of age from its custodial parent, pursuant to G.S. 14-320.~~ to notification of a proposed adoptive placement pursuant to G.S. 48-3(b) and (c); and

(14) To receive and evaluate reports of abuse, neglect, or exploitation of disabled adults and to take appropriate action as required by the Protection of the Abused, Neglected, or Exploited Disabled Adults Act, Article 6 of this Chapter, to protect these adults.

(b) The director may delegate to one or more members of his staff the authority to act as his representative. The director may limit the delegated authority of his representative to specific tasks or areas of expertise."

Sec. 2. G.S. 108A-101(c) reads as rewritten:

"(c) The word 'director' shall mean the director of the county department of social services ~~or his representative~~ in the county in which the person resides or is ~~present.~~ present, or his representative as authorized in G.S. 108A-14."

Sec. 3. G.S. 7A-517 is amended by adding a new subdivision to read:

"(29) Director of the Department of Social Services. -- The director of the county department of social services in the county in which the juvenile resides or is found, or his representative as authorized in G.S. 108A-14."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 691 **CHAPTER 259**

AN ACT TO REMOVE THE CITY OF SALISBURY'S LOCAL MODIFICATIONS TO G.S. 58-84-30 AND G.S. 58-84-35.

The General Assembly of North Carolina enacts:

Section 1. Chapter 56 of the 1963 Session Laws and Chapter 176 of the 1973 Session Laws are repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 807 **CHAPTER 260**

AN ACT TO AMEND THE LAW RELATING TO THE CONOVER FIREMEN'S SUPPLEMENTAL RETIREMENT FUND.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 334 of the 1977 Session Laws reads as rewritten:

"Sec. 2. Transfers of funds and disbursements. Notwithstanding the provisions of G.S. 118-7, the Board of Trustees of the Local Firemen's Relief Fund of the City of Conover shall:

(a) prior to January 1, 1978, transfer to the supplemental retirement fund all funds, including earnings on investments, of the local relief fund in excess of twelve thousand dollars ($12,000):

(b) in each subsequent calendar year, and within 30 days after receipt from the city treasurer of the annual funds paid to the local relief fund by authority of G.S. 118-5, transfer ~~to the supplemental retirement fund such funds;~~ such funds as follows:

(1) Eighty percent (80%) to the supplemental retirement fund, which amount, excluding its earned income for the calendar year of 1991 and thereafter, shall be paid, subject to the provisions of Section 2 of this act, as supplemental

retirement benefits, not in excess of six hundred dollars ($600.00) in benefits in any one year to any one retired fireman; and

(2) Twenty percent (20%) to the local relief fund, which funds shall, along with their income earned, be held in the local relief fund regardless of the amount accumulated.

(c) at any time when the amount of funds in the local relief fund shall, by reason of disbursements authorized by G.S. 118-7, be less than twelve thousand dollars ~~($12,000),~~ ($12,000) for the calendar year of 1978 through the calendar year of 1990, or twenty-five thousand dollars ($25,000), for the calendar year of 1991 and thereafter, transfer from the supplemental retirement fund to the local relief fund an amount sufficient to maintain in the local relief fund the sum of twelve thousand dollars ~~($12,000);~~ ($12,000) for the calendar year of 1978 through the calendar year of 1990, or the sum of twenty-five thousand dollars ($25,000) for the calendar year of 1991 and thereafter.

(d) as soon as practicable after January 1 of each year, but in no event later than July 1, divide funds belonging to the supplemental retirement ~~fund~~ fund, including the income earned in the preceding ~~calendar~~ year for the calendar year of 1978 through the calendar year of 1990 and excluding the income earned in the preceding year for the calendar year of 1991 and thereafter, upon investment of funds belonging to the local relief fund, into equal shares and disburse the same as supplemental retirement benefits in accordance with Section 3 of this act."

Sec. 2. Chapter 334 of the 1977 Session Laws is amended by inserting a new section to read:

"Sec. 3.1. The number of full years of service that determine, pursuant to Section 3 of this act, the number of shares each retired fireman shall receive upon retirement shall not include any year in which the retired fireman received benefits from the supplemental retirement fund."

Sec. 3. Section 7 of Chapter 334 of the 1977 Session Laws is repealed.

Sec. 4. None of the provisions of this act create a liability for the Conover Firemen's Supplemental Retirement Fund or for the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 868 **CHAPTER 261**

AN ACT TO PROVIDE A MEANS OF RECORDING A NOTICE DOCUMENT PRIOR TO A REAL ESTATE CLOSING WHICH WOULD FIX AT THAT TIME THE PRIORITY OF TITLE DOCUMENTS RECORDED LATER IN CONNECTION WITH THAT REAL ESTATE CLOSING.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes are amended by adding a new Chapter to read:

"Chapter 47D.

"Notice of Settlement Act.

"§ *47D-1. Short title.*

This Chapter shall be known as the 'Notice of Settlement Act.'

"§ *47D-2. Purpose.*

The underlying purpose and policy of this Chapter is to modernize the law governing the transfer of a legal or equitable title to real property, or interests therein, by simplifying the settlement of real property transactions and facilitating the disbursement of funds in connection with the settlement of real property transactions.

The use of this Chapter in a real estate transaction is optional, and failure to use the procedure authorized by this Chapter shall not constitute grounds for any claim for relief at law or equity, unless an express contract exists requiring its use. This Chapter does not supplant any of the registration laws in this State, but creates an additional, nonexclusive procedure for registering a property interest in real property through the use of a notice of settlement, and establishing concurrently therewith priority in the property in a grantee or mortgagee from the time of filing of the notice. As an example of the principle set out in the preceding sentence and the effect of this Chapter on existing registration laws, nothing in this Chapter shall have any effect upon the effective date of liens and the effective time of perfection of liens as set forth in Chapter 44A.

"§ *47D-3. Definitions.*

Unless it is plainly evident from the context that a different meaning is intended, as used herein:

(1) 'Business day' means a day during which the office of the register of deeds of the county in which the real property which is the subject of a notice of settlement is open to the public for the filing of documents.

(2) 'Deed' means any instrument conveying a legal or equitable title to, or an interest in, real property for other than security purposes.

(3) 'Grantee' means the person to whom a legal or equitable title to real property, or an interest therein, shall be conveyed pursuant to a settlement.

(4) 'Mortgage' means a mortgage, deed of trust, or other instrument conveying a legal or equitable interest in real property for security purposes.

(5) 'Mortgagor' means the person executing a mortgage pursuant to a settlement.

(6) 'Mortgagee' means the grantee, beneficiary, or secured party in a mortgage.

(7) 'Person' means any individual, firm, corporation, governmental unit or subdivision, or other legal entity that may hold a legal or equitable title to, or interest in, real property under the laws of the State of North Carolina.

(8) 'Settlement' means the delivery of the instrument conveying a legal or equitable title to, or interest in, real property to the grantee for valuable consideration as agreed upon by the parties to the transaction.

(9) 'Settlement attorney' means the attorney signing the notice of settlement authorized by this Chapter.

"*§ 47D-4. Instrument; designation; filing; index of notice of settlement.*

Any attorney licensed to practice law in the State of North Carolina having responsibilities with reference to a settlement that he in good faith reasonably believes will occur within three business days, or any person who holds of record the legal or equitable title to, or interest in, real property to be conveyed pursuant to a settlement may file an instrument designated a 'notice of settlement' in the office of the register of deeds of the county in which the real property is situated. The notice shall be indexed in the indexes provided for real estate conveyances, shall be filed as a real estate instrument, and shall be indexed under the name of the person who holds of record the legal or equitable title to, or interest in, the real property to be conveyed pursuant to a settlement as grantor or grantors. No indexing under the 'grantee' portion of the indexes shall be required. Any filing fee shall be paid by the person conveying the legal or equitable title.

"*§ 47D-5. Signature; content; acknowledgment.*

The notice of settlement shall be signed and acknowledged in accordance with G.S. 47-38 by the settlement attorney or other person authorized by this Chapter to file a notice of settlement. Such notice shall set forth the address and telephone number of such attorney or person, the name or names of the person or persons who hold of record the legal or equitable title to, or interest in, the real property to be conveyed pursuant to a settlement, and a legal description of the real property.

"§ *47D-6. Form.*

The form of the notice of settlement shall be substantially as follows:

Name(s):	)
(Current owner(s) of record)	)
	)
	)
(Street address)	)
	)
	)
(City or town, and state)	)
	)
AND	)
	)
(Name of grantee(s) and/or mortgagee(s))	)
	)
AND	) NOTICE OF SETTLEMENT
	)
(Name of settlement attorney, if any)	)
	)
(Street address)	)
____, North Carolina	)
(City or town)	)
	)
	)
(Telephone number)	)

NOTICE is hereby given pursuant to Chapter 47D of the North Carolina General Statutes of a settlement affecting title to the following described real property of the captioned record owner or owners:

(legal description - mandatory)

(street address and/or tax map references are optional)

This notice shall be effective from the time of, and for three business days following the day of, filing of this notice in the office of

the register of deeds of the county in which the above real property is situated.

Signature of settlement attorney
or record owner or owners

North Carolina, County

I, (here give the name of the official and his official title), do hereby certify that (here give the name of the settlement attorney or record owner or owners) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the day of (year).

Official Seal

Signature of officer

Prepared by the above named
settlement attorney or

.

"§ *47D-7. Constructive notice; priority.*

The filing of a notice of settlement shall be record evidence of a property interest of the grantee or mortgagee identified in the notice in the real property to be conveyed pursuant to the settlement for which the notice is filed, and shall establish priority in the grantee or mortgagee from the time of, and for three business days following, the day of filing of the notice against subsequent purchasers for value, lien creditors, and other persons claiming an interest in the real property through any person who holds of record the legal or equitable title to, or interest in, the real property. A deed or mortgage delivered pursuant to the settlement for which the notice is filed and properly registered in the county where the real property is situated within three business days following the day of filing of the notice shall continue the priority of the grantee or mortgagee in such real property established by the notice and the priority of the grantee or mortgagee under the properly registered deed or mortgage shall be a continuously perfected interest in such real property from the time of filing of the notice of settlement against subsequent purchasers for value, lien creditors, and other persons claiming an interest in the real

property through any person who holds of record the legal or equitable title to, or interest in, the real property, provided the deed or mortgage registered pursuant to the settlement bears a legend that is in a form and substance substantially as follows:

'This instrument was delivered at the settlement referred to in the notice of settlement filed by: _____ Signatory of notice of settlement _____ (date)

"§ 47D-8. *Duration of notice; priority; number of filings.*

(a) The notice of settlement shall be effective as provided in G.S. 47D-7(a) from the time of, and for three business days following the day of, filing of the notice of settlement pursuant to this Chapter. If the deed or mortgage delivered pursuant to a settlement for which the notice was filed has not been properly registered in the county where the real property is situated within the three business day period, the notice of settlement shall become absolutely void, and the priority of the grantee or mortgagee under the deed or mortgage registered subsequent to said three business day period shall date from the time of registration of the deed or mortgage, and not from the time of the filing of the notice of settlement.

(b) Only one notice of settlement may be filed with respect to any settlement and if a settlement does not occur within three business days following the day of the filing of the notice of settlement, no further or additional notices may be filed with respect to the settlement for which the notice was filed.

"§ 47D-9. *Early termination of notice of settlement.*

The signatory of a notice of settlement filed pursuant to this Chapter may terminate the notice at any time during the duration of its effectiveness as provided in G.S. 47D-8(a) by filing a notice of termination in a form substantially as follows:

Name(s): _____)
(Current owner(s) of record) _____)
_____)
_____)
_____)
(Street address) _____)
_____)
_____)
_____)
(City or town, and state) _____)
_____)
AND)
_____)
_____)

(Name of grantee(s))	)	
	)	TERMINATION OF
AND	)	NOTICE OF SETTLEMENT
	)	
_____	)	
(Name of settlement attorney, if any)	)	
_____	)	
(Street address)	)	
	)	
_____, North Carolina	)	
(City or town)	)	
	)	
_____	)	
(Telephone number)	)	

NOTICE is hereby given pursuant to Chapter 47D of the North Carolina General Statutes that the notice of settlement filed by the undersigned on _____ is hereby terminated.

_____

Signature of settlement attorney or record owner or owners

North Carolina, _____ County

I, (here give the name of the official and his official title), do hereby certify that (here give the name of the settlement attorney or record owner or owners) personally appeared before me this day and acknowledged the due execution of the foregoing instrument. Witness my hand and (where an official seal is required by law) official seal this the _____ day of _____ (year).

Official Seal

_____

Signature of officer

Prepared by the above named settlement attorney or _____

"§ *47D-10. Severability.*

If any provision of this Chapter or the application thereof to any person or circumstances is held invalid, the invalidity shall not affect other provisions or applications of this Chapter which can be given

effect without the invalid provision or application, and to this end the provisions of this Chapter are severable."

Sec. 2. This act becomes effective July 1, 1992. Section 1 expires June 30, 1993.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

H.B. 976 **CHAPTER 262**

AN ACT TO PROTECT FEDERAL OFFICERS AGAINST CIVIL LIABILITY WHEN ASSISTING STATE OR LOCAL LAW ENFORCEMENT OFFICERS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 15A of the General Statutes is amended by adding a new section after G.S. 15A-405 to read:

"*§ 15A-406. Assistance by federal officers.*

(a) For purposes of this section, 'federal law enforcement officer' means any of the following persons who are employed as full-time law enforcement officers by the federal government and who are authorized to carry firearms in the performance of their duties:

(1) United States Secret Service special agents;
(2) Federal Bureau of Investigation special agents;
(3) Bureau of Alcohol, Tobacco and Firearms special agents;
(4) United States Naval Investigative Service special agents;
(5) Drug Enforcement Administration special agents;
(6) United States Customs Service officers;
(7) United States Postal Service inspectors;
(8) Internal Revenue Service special agents;
(9) United States Marshals Service marshals and deputies;
(10) United States Forest Service officers;
(11) National Park Service officers.
(12) U.S. Fish and Wildlife Service

(b) A federal law enforcement officer is authorized under the following circumstances to enforce criminal laws anywhere within the State:

(1) If the federal law enforcement officer is asked by the head of a state or local law enforcement agency, or his designee, to provide temporary assistance and the request is within the scope of the state or local law enforcement agency's subject matter and territorial jurisdiction; or
(2) If the federal law enforcement officer is asked by a state or local law enforcement officer to provide temporary assistance when at the time of the request the state or local

law enforcement officer is acting within the scope of his subject matter and territorial jurisdiction.

(c) A federal law enforcement officer shall have the same powers as those invested by statute or common law in a North Carolina law enforcement officer, and shall have the same legal immunity from personal civil liability as a North Carolina law enforcement officer, while acting pursuant to this section.

(d) A federal law enforcement officer who acts pursuant to this section shall not be considered an officer, employee, or agent of any state or local law enforcement agency.

(e) For purposes of the Federal Tort Claims Act, a federal law enforcement officer acts within the scope of his office or employment while acting pursuant to this section.

(f) Nothing in this section shall be construed to expand the authority of federal officers to initiate or conduct an independent investigation into violation of North Carolina law."

Sec. 2. This act is effective upon ratification and applies to actions by federal law enforcement officers occurring on or after that date.

In the General Assembly read three times and ratified this the 11th day of June, 1991.

S.B. 23 **CHAPTER 263**

AN ACT TO PROHIBIT THE USE OF BLUE LIGHTS BY ANYONE OTHER THAN LAW ENFORCEMENT PERSONNEL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-130.1(c) reads as rewritten:

"(c) It is unlawful for any person to install or activate or operate a blue light in or on any vehicle in this State. It is unlawful for any person to possess a blue light in or on any vehicle in this State. As used in this subsection, unless the context requires otherwise, 'blue light' means an operable blue light not sealed in the manufacturer's original package which:

(1) Is designed for use by an emergency vehicle, or is similar in appearance to a blue light designed for use by an emergency vehicle; and

(2) Can be operated by use of the vehicle's battery, the vehicle's electrical system, or a dry cell battery."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 286 **CHAPTER 264**

AN ACT TO SPECIFY CERTAIN DUTIES OF THE CHAIRMAN OF THE INDUSTRIAL COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-77 reads as rewritten:

"*§ 97-77. North Carolina Industrial Commission created; members appointed by Governor; terms of office; chairman.*

(a) There is hereby created a commission to be known as the North Carolina Industrial Commission, consisting of three commissioners who shall devote their entire time to the duties of the Commission. The Governor shall appoint the members of the Commission, one for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned, the Governor shall appoint a successor for a term of six years, and thereafter the term of office of each commissioner shall be six years. Not more than one appointee shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employers, and not more than one appointee shall be a person who, on account of his previous vocation, employment or affiliations, can be classed as a representative of employees.

(b) One member, to be designated by the Governor, shall act as chairman. The chairman shall be the chief judicial officer and the chief executive officer of the Industrial Commission; such authority shall be exercised pursuant to the provisions of Chapter 126 of the General Statutes and the rules and policies of the State Personnel Commission. Notwithstanding the provisions of this Chapter, the chairman shall have such authority as is necessary to direct and oversee the Commission. The chairman may delegate any duties and responsibilities as may be necessary to ensure the proper management of the Industrial Commission. Notwithstanding the provisions of this Chapter, Chapter 143A, and Chapter 143B of the General Statutes, the chairman, with the approval of at least one of the other commissioners, shall have the authority to hire or fire personnel and to transfer personnel within the Industrial Commission.

The Governor may designate one vice-chairman from the remaining two commissioners. The vice-chairman shall assume the powers of the chairman upon request of the chairman or when the chairman is absent for 24 hours or more. The authority delegated to the vice-chairman shall be relinquished immediately upon the return of the chairman or at the request of the chairman."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 422 **CHAPTER 265**

AN ACT TO MAKE CLARIFYING CHANGES TO THE LAWS CONCERNING THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 17E-2 reads as rewritten:

"§ *17E-2. Definitions.*

Unless the context clearly requires otherwise, the following definitions apply to this Chapter:

(1) 'Commission' means the North Carolina Sheriffs' Education and Training Standards Commission.

(2) 'Office' or 'department' means the sheriff of a county, ~~elected by the people as required by the Constitution,~~ his deputies, his employees and such equipment, space, provisions and quarters as are supplied for their use.

(3) 'Justice officer' or 'law-enforcement officer' means a person who, through the special trust and confidence of the ~~elected~~ sheriff of the county, has taken the oath of office prescribed by Chapter 11 of these statutes as a peace officer in the office of a ~~sheriff or jailers.~~ sheriff, or who has been duly appointed as a jailer by the sheriff. The term includes 'deputy sheriffs' and 'special deputy sheriffs' but does not include clerical and support personnel not required to take an oath. The term 'special deputy' means a person who, through appointment by the sheriff, becomes an unpaid criminal justice officer to perform a specific act directed to him by the sheriff."

Sec. 2. G.S. 17E-4(a) reads as rewritten:

"(a) The Commission shall have the following powers, duties, and responsibilities, which are enforceable through its rules and regulations, certification procedures, or the provisions of G.S. 17E-8 and G.S. 17E-9:

(1) Promulgate rules and regulations for the administration of this Chapter, which rules may require (i) the submission by any agency of information with respect to the employment, education, and training of its law-enforcement officers, and (ii) the submission by any training school of information with respect to its programs that are required by this Chapter;

(2) Establish minimum educational and training standards that may be met in order to qualify for entry level employment as an officer in temporary or probationary status or in a permanent position;
(3) Certify, pursuant to the standards that it may establish for the purpose, persons as qualified under the provisions of this Chapter who may be employed at entry level as officers;
(4) Establish minimum standards for the certification of training schools and programs or courses of instruction that are required by this Chapter;
(5) Certify, pursuant to the standards that it has established for the purpose, training schools and programs or courses of instruction that are required by this Chapter;
(6) Establish standards and levels of education or equivalent experience for teachers who participate in programs or courses of instruction that are required by this Chapter;
(7) Certify, pursuant to the standards that it has established for the purpose, teachers who participate in programs or courses of instruction that are required by this Chapter;
(8) ~~Make~~ Investigate and make such evaluations as may be necessary to determine if agencies are complying with the provision of this Chapter;
(9) Adopt and amend bylaws, consistent with law, for its internal management and control;
(10) Enter into contracts incident to the administration of its authority pursuant to this Chapter.

The Commission may certify, and no additional certification shall be required from it, programs, courses and teachers certified by the North Carolina Criminal Justice Education and Training Standards Commission. Where the Commission determines that a program, course, instructor or teacher is required for an area which is unique to the office of sheriff, the Commission may certify such program, course, instructor, or teacher under such standards and procedures as it may establish."

Sec. 3. G.S. 17E-7 reads as rewritten:

"*§ 17E-7. Required standards.*

(a) ~~Officers~~ Justice officers shall not be required to meet any requirements of subsections (b) and (c) of this section as a condition of continued employment, nor shall failure of ~~any such justice officer~~ a justice officer to fulfill such requirements make him ineligible for any promotional examination for which he is otherwise eligible if the officer held an appointment prior to July 1, 1983, and is a sworn law-enforcement officer with power of arrest. The legislature finds,

and it is hereby declared to be the policy of this Chapter, that such officers have satisfied such requirements by their experience. It is the intent of the Chapter that all law-enforcement officers employed at the entry level after the Commission has adopted the required standards shall meet the requirements of this Chapter. All justice officers who are exempted from the required entry level standards by this subsection are subject to the requirements of subsections (b) and (c) of this section as well as the requirements of G.S. 17E-4(a) in order to retain certification.

(b) The Commission shall provide, by regulation, that no person may be appointed as a law-enforcement officer at entry level, except on a temporary or probationary basis, unless such person has satisfactorily completed an initial preparatory program of training at a school certified by the Commission or has been exempted from that requirement by the Commission pursuant to this Chapter. Upon separation of a law-enforcement officer from a sheriff's department within the temporary or probationary period of appointment, the probationary certification shall be terminated by the Commission. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period, the officer shall be charged with the amount of time served during his initial appointment and allowed the remainder of the probationary period to complete the basic training requirement. Upon the reappointment to the same department or appointment to another department of an officer who has separated from a department within the probationary period and who has remained out of service for more than one year from the date of separation, the officer shall be allowed another probationary period to complete such training as the Commission shall require by rule for an officer returning to service.

(c) In addition to the requirements of subsection (b) of this section, the Commission, by rules and regulations, may fix other qualifications for the employment and retention of law-enforcement officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of the office, and the Commission shall prescribe the means for presenting evidence of fulfillment of these requirements.

Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Upon petition from a sheriff, the Commission may grant a

waiver of any provisions of this section (17E-7) for any justice officer serving that sheriff.

(d) The Commission may issue a certificate evidencing satisfaction of the requirements of subsections (b) and (c) of this section to any applicant who presents such evidence as may be required by its rules and regulations of satisfactory completion of a program or course of instruction in another jurisdiction."

Sec. 4. G.S. 17E-11 reads as rewritten:

"§ *17E-11. Application and construction of Chapter.*

(a) Nothing in this Chapter shall apply to the sheriff elected by the people.

(b) Nothing in this Chapter shall be construed as modifying the character of a sheriff from an elective office, or as modifying the character of the office of deputy sheriff from an appointive office.

(c) If a justice officer, or a criminal justice officer as defined in G.S. 17C-2(c), becomes sheriff, the justice officer is not required to maintain certification for the period served as sheriff. The Commission shall reinstate certification upon the conclusion of the period of service as sheriff and in conformance with the rules of the Commission for the application for certification."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 511 **CHAPTER 266**

AN ACT TO REGULATE HUNTING AND THE USE OF FIREARMS IN WAKE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful for any person to hunt, take, or kill any animal with the use of a center-fire rifle, unless that person is positioned at least eight feet above the ground.

Sec. 2. Unless a landowner or lessee thereof has posted upon his land a notice specifically allowing persons to hunt, take or kill any animal or to possess a loaded firearm thereon, it is unlawful for any person to hunt, take, or kill any animal, or to have in his possession, outside the confines of the passenger area of a vehicle, a loaded firearm, on the land of another, without having, in his possession, the written permission of the owner or lessee of the land. The written permission shall be dated, and shall be valid for no longer than one year after its issuance. Such permission must be displayed upon the request of any law enforcement officer with the authority to enforce this act.

Sec. 3. It is unlawful for any person to have in his possession a loaded shotgun or center-fire rifle while on the right-of-way of any road or highway when outside the confines of the passenger area of a vehicle. This section shall not apply to the fee owner of land underlying a right-of-way.

Sec. 4. This act shall not apply to the use or possession of firearms in defense of persons or property, to law enforcement officers or members of the armed forces acting in the line of duty, or to the use of firearms pursuant to the lawful direction of law enforcement officers.

Sec. 5. This act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and peace officers with general subject matter jurisdiction.

Sec. 6. Violation of any provision of this act is a misdemeanor punishable by a fine of not more than one hundred fifty dollars ($150.00) and by imprisonment not to exceed 30 days, or by both.

Sec. 7. This act applies only to Wake County.

Sec. 8. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 624 **CHAPTER 267**

AN ACT TO CLARIFY THE APPLICABILITY OF THE WINERY SPECIAL SHOW PERMIT TO BE RENAMED THE WINERY SPECIAL EVENT PERMIT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1114.1(a) reads as rewritten:

"*§ 18B-1114.1. Authorization of winery special ~~show~~ event permit.*

(a) Authorization. -- The holder of an unfortified winery, ~~fortified winery,~~ or limited winery permit may obtain a winery special ~~show~~ event permit. The holder of a winery special ~~show~~ event permit may:

(1) Give free tastings of its wine at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(2) Sell its products in closed containers at trade shows, conventions, shopping malls, wine festivals, street festivals, holiday festivals, agricultural festivals, balloon races, local fund-raisers, and other similar events approved by the Commission.

(b) Limitation. -- A winery special ~~show~~ event permit is valid only in a jurisdiction that has approved the establishment of ABC stores or has approved the sale of unfortified wine."

Sec. 2. G.S. 18B-902(d)(28) reads as rewritten:

"(28) Winery special ~~show~~ event permit. -- $100.00."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 764 **CHAPTER 268**

AN ACT TO PROVIDE THAT ACTIONS FOR NEGLIGENT OR DEFICIENT SURVEYING OR PLATTING AGAINST REGISTERED LAND SURVEYORS BE COMMENCED WITHIN THREE YEARS AND IN NO EVENT MORE THAN TEN YEARS FROM THE ACT OR OMISSION GIVING RISE TO THE ACTION, AND TO AMEND THE LAW PROVIDING MAPPING REQUIREMENTS FOR PLATS AND SUBDIVISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-52 reads as rewritten:

"§ *1-52. Three years.*

Within three years an action --

(1) Upon a contract, obligation or liability arising out of a contract, express or implied, except those mentioned in the preceding sections or in G.S. 1-53(1).

(2) Upon a liability created by statute, either state or federal, unless some other time is mentioned in the statute creating it.

(3) For trespass upon real property. When the trespass is a continuing one, the action shall be commenced within three years from the original trespass, and not thereafter.

(4) For taking, detaining, converting or injuring any goods or chattels, including action for their specific recovery.

(5) For criminal conversation, or for any other injury to the person or rights of another, not arising on contract and not hereafter enumerated.

(6) Against the sureties of any executor, administrator, collector or guardian on the official bond of their principal; within three years after the breach thereof complained of.

(7) Against bail; within three years after judgment against the principal; but bail may discharge himself by a surrender of

the principal, at any time before final judgment against the bail.

(8) For fees due to a clerk, sheriff or other officer, by the judgment of a court; within three years from the rendition of the judgment, or the issuing of the last execution thereon.

(9) For relief on the ground of fraud or mistake; the cause of action shall not be deemed to have accrued until the discovery by the aggrieved party of the facts constituting the fraud or mistake.

(10) Repealed by Session Laws 1977, c. 886, s. 1.

(11) For the recovery of any amount under and by virtue of the provisions of the Fair Labor Standards Act of 1938 and amendments thereto, said act being an act of Congress.

(12) Upon a claim for loss covered by an insurance policy which is subject to the three-year limitation contained in lines 158 through 161 of the Standard Fire Insurance Policy for North Carolina, G.S. 58-44-15(c).

(13) Against a public officer, for a trespass, under color of his office.

(14) An action under Chapter 75B of the General Statutes, the action in regard to a continuing violation accrues at the time of the latest violation.

(15) For the recovery of taxes paid as provided in G.S. 105-267 and G.S. 105-381.

(16) Unless otherwise provided by statute, for personal injury or physical damage to claimant's property, the cause of action, except in causes of actions referred to in G.S. 1-15(c), shall not accrue until bodily harm to the claimant or physical damage to his property becomes apparent or ought reasonably to have become apparent to the claimant, whichever event first occurs. Provided that no cause of action shall accrue more than 10 years from the last act or omission of the defendant giving rise to the cause of action.

(17) Against a public utility, electric or telephone membership corporation, or a municipality for damages or for compensation for right-of-way or use of any lands for a utility service line or lines to serve one or more customers or members unless an inverse condemnation action or proceeding is commenced within three years after the utility service line has been constructed or by October 1, 1984, whichever is later.

(18) Against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and

control for physical damage or economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting as defined in G.S. 1-50(7)."

Sec. 2. G.S. 1-50 reads as rewritten:

"*§ 1-50. Six years.*

Within six years an action --

(1) Upon the official bond of a public officer.

(2) Against an executor, administrator, collector, or guardian on his official bond, within six years after the auditing of his final account by the proper officer, and the filing of the audited account as required by law.

(3) For injury to any incorporeal hereditament.

(4) Against a corporation, or the holder of a certificate or duplicate certificate of stock in the corporation, on account of any dividend, either a cash or stock dividend, paid or allotted by the corporation to the holder of the certificate or duplicate certificate of stock in the corporation.

(5) a. No action to recover damages based upon or arising out of the defective or unsafe condition of an improvement to real property shall be brought more than six years from the later of the specific last act or omission of the defendant giving rise to the cause of action or substantial completion of the improvement.

b. For purposes of this subdivision, an action based upon or arising out of the defective or unsafe condition of an improvement to real property includes:

1. Actions to recover damages for breach of a contract to construct or repair an improvement to real property;
2. Actions to recover damages for the negligent construction or repair of an improvement to real property;
3. Actions to recover damages for personal injury, death or damage to property;
4. Actions to recover damages for economic or monetary loss;
5. Actions in contract or in tort otherwise;
6. Actions for contribution indemnification for damages sustained on account of an action described in this subdivision;
7. Actions against a surety or guarantor of a defendant described in this subdivision;
8. Actions brought against any current or prior owner of the real property or improvement, or against any

other person having a current or prior interest therein;

9. Actions against any person furnishing materials, or against any person who develops real property or who performs or furnishes the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property.

c. For purposes of this subdivision, 'substantial completion' means that degree of completion of a project, improvement or specified area or portion thereof (in accordance with the contract, as modified by any change orders agreed to by the parties) upon attainment of which the owner can use the same for the purpose for which it was intended. The date of substantial completion may be established by written agreement.

d. The limitation prescribed by this subdivision shall not be asserted as a defense by any person in actual possession or control, as owner, tenant or otherwise, of the improvement at the time the defective or unsafe condition constitutes the proximate cause of the injury or death for which it is proposed to bring an action, in the event such person in actual possession or control either knew, or ought reasonably to have known, of the defective or unsafe condition.

e. The limitation prescribed by this subdivision shall not be asserted as a defense by any person who shall have been guilty of fraud, or willful or wanton negligence in furnishing materials, in developing real property, in performing or furnishing the design, plans, specifications, surveying, supervision, testing or observation of construction, or construction of an improvement to real property, or a repair to an improvement to real property, or to a surety or guarantor of any of the foregoing persons, or to any person who shall wrongfully conceal any such fraud, or willful or wanton negligence.

f. This subdivision prescribes an outside limitation of six years from the later of the specific last act or omission or substantial completion, within which the limitations prescribed by G.S. 1-52 and 1-53 continue to run. For purposes of the three-year limitation prescribed by G.S. 1-52, a cause of action based upon or arising out of the

defective or unsafe condition of an improvement to real property shall not accrue until the injury, loss, defect or damage becomes apparent or ought reasonably to have become apparent to the claimant. However, as provided in this subdivision, no action may be brought more than six years from the later of the specific last act or omission or substantial completion.

g. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c), G.S. 1-52(16) and G.S. 1-47(2).

(6) No action for the recovery of damages for personal injury, death or damage to property based upon or arising out of any alleged defect or any failure in relation to a product shall be brought more than six years after the date of initial purchase for use or consumption.

(7) a. No action against any registered land surveyor as defined in G.S. 89C-3(9) or any person acting under his supervision and control for physical damage or for economic or monetary loss due to negligence or a deficiency in the performance of surveying or platting shall be brought more than 10 years from the last act or omission giving rise to the cause of action.

b. For purposes of this subdivision, 'surveying and platting' means boundary surveys, topographical surveys, surveys of property lines, and any other measurement or surveying of real property and the consequent graphic representation thereof.

c. The limitation prescribed by this subdivision shall apply to the exclusion of G.S. 1-15(c) and G.S. 1-52(16)."

Sec. 3. G.S 47-30 reads as rewritten:

"*§ 47-30. Plats and subdivisions; mapping requirements.*

(a) Size Requirements. -- All land plats presented to the register of deeds for recording in the registry of a county in North Carolina after ~~January 1, 1984,~~ September 30, 1991, ~~shall have~~ having an outside marginal size of ~~not more than~~ either 18 inches by 24 inches, 21 inches by 30 inches, or 24 inches by 36 inches, ~~nor less than eight and one-half inches by 14 inches, and shall include a~~ and having a minimum one and one-half inch border on the left side and a minimum one-half inch border ~~on each side.~~ on the other sides shall be deemed to meet the size requirements for recording under this section. ~~Registers of deeds may require a one and one-half inch border on one side for binding.~~ Where size of land areas, or suitable scale to assure legibility require, plats may be placed on two or more

sheets with appropriate match lines. Counties may specify ~~a specific size within the limits of these requirements;~~ either:

(1) Only 18 inches by 24 inches;

(2) A combination of 18 inches by 24 inches and 21 inches by 30 inches;

(3) A combination of 18 inches by 24 inches and 24 inches by 36 inches; or

(4) A combination of all three sizes.

Provided, that all registers of deeds where ~~a specific size is specified~~ specific sizes other than the combination of all three sizes have been specified, shall be required to submit said size specifications to the North Carolina Association of Registers of Deeds for inclusion on a master list of all such counties. The list shall be available in each register of deeds office by October 1, 1991. ~~posted in each register of deeds office. All counties currently operating under statutes or other laws setting forth regulatory size will be allowed to continue to use such sizes as are currently in use until January 1, 1984, on or before which time they shall modify their size to conform to those shown above.~~ For purposes of this section, the terms 'plat' and 'map' are synonymous.

(b) Plats to Be Reproducible. -- Each plat presented for recording shall be a reproducible ~~plat in linen, film, mylar or other similar, transparent and permanent material~~ plat, either original ink on polyester film (mylar), or a reproduced drawing, transparent and archival (as defined by the American National Standards Institute), and submitted in this form. ~~White prints may be submitted provided the filing officer has access to reproductive facilities to make a permanent master copy thereof by a process from which a direct copy can be made. In any case the process~~ The recorded plat must be such that the public may obtain legible copies. A direct or photographic copy of each recorded plat shall be placed in the plat book or plat file maintained for that purpose and properly indexed for use. ~~All filing officers are authorized to make permanent master copies of plats that have been recorded and filed before January 1, 1984, and may return the originals to the person offering them for recordation.~~

(c) Information Contained in Title of Plat. -- The title of each plat shall contain the following information: property designation, name of ~~owner,~~ owner (the name of owner shall be shown for indexing purposes only and is not to be construed as title certification), location to include township, county and state, the date or dates the survey was made; scale ~~in feet per inch~~ or scale ratio in words or figures and bar graph; name and address of surveyor or firm preparing the plat.

(d) Certificate; Form. -- There shall appear on each plat a certificate by the person under whose supervision such survey or such

plat was made, stating the origin of the information shown on the plat, including recorded deed and plat references shown thereon. The ratio of precision ~~as calculated by latitudes and departures~~ before any adjustments must be shown. Any lines on the plat that were not actually surveyed must be clearly indicated and a statement included revealing the source of information. The execution of such certificate shall be acknowledged before any officer authorized to take acknowledgments by the registered land surveyor preparing the plat. All plats to be recorded shall be probated as required by law for the registration of deeds. Where a plat consists of more than one sheet, only ~~the first~~ one sheet must contain the certification and all ~~subsequent~~ other sheets must be signed and sealed.

The certificate required above shall include the source of information for the survey and data indicating the ~~accuracy of closure of the plat~~ ratio of precision of the survey before adjustments and shall be in substantially the following form:

'I, ..., certify that this plat was drawn under my supervision from ~~(an actual survey made under my supervision)~~ an actual survey made under my supervision (deed description recorded in Book ....., page ....., etc.) (other); that the boundaries not surveyed are ~~shown as broken lines plotted~~ clearly indicated as drawn from information found in Book ....., page .....; that the ratio of precision as calculated is 1:.....; that this plat was prepared in accordance with G.S. 47-30 as amended. Witness my original signature, registration number and seal this ..... day of ....., A.D., 19.....

Seal or Stamp

.....
Surveyor

.....
Registration Number'

The certificate of the Notary shall read as follows:

'North Carolina, ...County.

I, a Notary Public of the County and State aforesaid, certify that....., a registered land surveyor, personally appeared before me this day and acknowledged the execution of the foregoing instrument. Witness my hand and official stamp or seal, this..... day of ....., 19.....

~~Seal-Stamp~~ Seal or Stamp

Notary Public
My Commission expires .....'

Nothing in this requirement shall prevent the recording of a map that was prepared in accordance with a previous version of G.S. 47-30 as amended, properly signed, and notarized under the statutes applicable at the time of the signing of the map. However, it shall be the responsibility of the person presenting the map to prove that the map was so prepared.

(e) Method of Computation. -- An accurate method of computation shall be used to determine the acreage and ratio of precision shown on the plat. Area by estimation is not acceptable nor is area by planimeter, area by scale, or area ~~copies~~ copied from another source, except in the case of tracts containing inaccessible sections or areas. In such case the surveyor may make use of aerial photographs or other appropriate aids to determine the acreage of such inaccessible areas when such areas are bounded by natural and visible monuments. In such case the ~~The~~ methods used must be ~~fully~~ stated ~~and explained~~ on the ~~face of the~~ plat and all accessible areas of the tract shall remain subject to all applicable standards of this section.

(f) Plat to Contain Specific Information. -- Every plat shall contain the following specific information:

(1) An accurately positioned north arrow coordinated with any bearings shown on the plat. Indication shall be made as to whether the north index is true, magnetic, North Carolina ~~grid,~~ grid ('NAD 83' or 'NAD 27'), or is referenced to old deed or plat bearings. If the north index is magnetic or referenced to old deed or plat bearings, the date and the source (if known) such index was originally determined shall be clearly indicated.

(2) The azimuth or ~~courses~~ course and ~~distances as surveyed of every line~~ distance of every property line surveyed shall be shown. Distances shall be in feet or meters and decimals thereof. The number of decimal places shall be appropriate to the class of survey required.

(3) All plat ~~lines~~ distances shall be by horizontal ~~(level)~~ or grid measurements. All ~~information~~ lines shown on the plat shall be correctly plotted to the scale shown. Enlargement of portions of a plat are acceptable in the interest of clarity, where shown as ~~inserts on the same sheet.~~ inserts. Where the North Carolina grid system is used the grid factor shall be shown on the face of the ~~plat and a designation as to whether horizontal ground distances or grid distances were used.~~ plat. If grid distances are used, it must be shown on the plat.

(4) Where a boundary is formed by a curved line, the following data must be given: actual survey data from the point of curvature to the point of tangency shall be shown as standard curve data, or as a traverse of bearings and distances around the curve. If standard curve data is used the bearing and distance of the long chord (from point of curvature to point of tangency) must be shown on ~~the face of~~ the plat.

(5) Where a subdivision of land is set out on the plat, all streets and lots shall be ~~carefully~~ accurately plotted with dimension lines indicating widths and all other information pertinent to reestablishing all lines in the field. This shall include bearings and distances sufficient to form a continuous closure of the entire perimeter.

(6) Where control corners have been established in compliance with G.S. 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended, the location and pertinent information as required in the reference statute shall be plotted on the plat. All other corners which are marked by monument or natural object shall be so identified on all plats, and where practical all corners of adjacent owners ~~in~~ along the boundary lines of the subject tract which are marked by monument or natural object ~~must~~ shall be ~~shown with a distance from one or more of the subject tract's corners,~~ shown.

(7) The names of adjacent ~~landowners along with~~ landowners, or lot, ~~block or~~ block, ~~parcel identifier and~~ parcel, subdivision designations or other legal reference where applicable, shall be shown where they could be determined by the surveyor.

(8) All visible and apparent rights-of-way, watercourses, utilities, roadways, and other such improvements shall be accurately located where crossing or forming any boundary line of the property shown.

(9) Where the plat is the result of a survey, one or more corners shall, by a system of azimuths or courses and distances, be accurately tied to and coordinated with a horizontal control monument of some United States or State Agency survey system, such as the ~~National~~ North Carolina Geodetic Survey ~~(formerly U.S. Coast and Geodetic Survey) system,~~ where such monument is within 2,000 feet of ~~said corner.~~ the subject property. Where the North Carolina Grid System coordinates of said monument are on file in the North Carolina Department of Environment,

Health, and Natural Resources, the coordinates of both the referenced corner ~~shall be computed~~ and the monuments used shall be shown in X (easting) and Y (northing) ~~ordinates~~ coordinates on the ~~map.~~ plat. The coordinates shall be identified as based on 'NAD 83,' indicating North American Datum of 1983, or as 'NAD 27,' indicating North American Datum of 1927. The tie lines to the monuments shall also be sufficient to establish true north or grid north bearings for the plat if the monuments exist in pairs. Within a previously recorded subdivision that has been tied to grid control, control monuments within the subdivision may be used in lieu of additional ties to grid control. Within a previously recorded subdivision that has not been tied to grid control, if horizontal control monuments are available within 2,000 feet, the above requirements shall be met; but in the interest of bearing consistency with previously recorded plats, existing bearing control should be used where practical. In the absence of Grid Control, other appropriate natural monuments or landmarks shall be used. In all cases, the tie lines shall be sufficient to accurately reproduce the subject lands from the control or reference points used.

(10) A vicinity map (location map) shall appear on ~~the face of~~ the plat.

(11) Notwithstanding any other provision contained in this section, it is the duty of the surveyor, by a certificate on the face of the plat, to certify to one of the following:

a. That the survey creates a subdivision of land within the area of a county or municipality that has an ordinance that regulates parcels of land;

b. That the survey is located in such portion of a county or municipality that is unregulated as to an ordinance that regulates parcels of land;

c. That the survey is of an existing parcel or parcels of land;

d. That the survey is of another category, such as the recombination of existing parcels, a court-ordered survey, or other exception to the definition of subdivision;

e. That the information available to the surveyor is such that the surveyor is unable to make a determination to the best of his or her professional ability as to provisions contained in (a) through (d) above.

However, if the plat contains the certificate of a surveyor as stated in a., d., or e. above, then the plat shall have, in addition to said surveyor's certificate, a certification of approval, or no approval required, as may be required by local ordinance from the appropriate government authority before the plat is presented for recordation. If the plat contains the certificate of a surveyor as stated in b. or c. above, nothing shall prevent the recordation of the plat if all other provisions have been met.

(g) Recording of Plat. -- For purposes of recording, the register of deeds shall not be responsible for:

(1) The provisions of subsection (b), as to archival;

(2) The provisions of subsection (d), except for the notary certificate;

(3) The provisions of subsection (e); or

(4) The provisions of subdivisions (2) through (9) of subsection (f).

A plat, when proven and probated as provided herein for deeds and other conveyances, when presented for recording, shall be recorded in the plat book or plat file and when so recorded shall be duly indexed. Reference in any instrument hereafter executed to the record of any plat herein authorized shall have the same effect as if the description of the lands as indicated on the record of the plat were set out in the instrument.

(h) Nothing in this section shall be deemed to prevent the filing of any plat prepared by a registered land surveyor but not recorded prior to the death of the registered land surveyor. However, it is the responsibility of the person presenting the map to prove that the plat was so prepared. For preservation these plats may be filed without signature, notary acknowledgement or probate, in a special plat file.

(i) Nothing in this section shall be deemed to invalidate any instrument or the title thereby conveyed making reference to any recorded plat.

(j) The provisions of this section shall not apply to boundary plats of areas annexed by municipalities nor to plats of municipal boundaries, whether or not required by law to be recorded.

(k) The provisions of this section shall apply to all ~~100~~ counties in North Carolina. Where local law is in conflict with this section, the provisions in this section shall apply. Failure of a plat to conform in all requirements of this statute shall be sufficient grounds for the register of deeds to refuse to accept the plat for recordation.

(l) The provisions of this section shall not apply to the registration of highway right-of-way plans provided for in G.S. 136-19.4 nor to

registration of roadway corridor official maps provided in Article 2E of Chapter 136.

(m) Any map prepared by a registered land surveyor and submitted for inclusion on the public record, whether submitted alone or attached to a deed or other instrument, shall conform to the standards of practice for land surveying in North Carolina, as defined in the Board rules of the North Carolina State Board of Registration for Professional Engineers and Land Surveyors. In the interest of the public welfare, and to assure that maps have not been altered prior to submission for recording, and in accordance with G.S. 89C-26, the maps shall have an original personal signature and original seal as approved by the North Carolina State Board for Registration for Professional Engineers and Land Surveyors. Nothing in this subsection shall prohibit the recordation of a document that includes an attachment not prepared by a registered land surveyor."

Sec. 4. Section 3 of this act becomes effective October 1, 1991. The remainder of this act is effective upon ratification and applies to any action filed on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 798 **CHAPTER 269**

AN ACT TO ALLOW LOCAL SCHOOL BOARDS TO DEVELOP POLICIES REGARDING CORPORAL PUNISHMENT IN THEIR SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-390 reads as rewritten:

"§ *115C-390. School personnel may use reasonable force.*

Except as restricted or prohibited by rules adopted by the local boards of education, principals, ~~Principals,~~ teachers, substitute teachers, voluntary teachers, and teacher assistants and student teachers in the public schools of this State may use reasonable force in the exercise of lawful authority to restrain or correct pupils and maintain order. ~~No local board of education shall promulgate or continue in effect a rule, regulation or bylaw which prohibits the use of such force as is specified in this section.~~"

Sec. 2. This act becomes effective July 1, 1991, and applies to all school years beginning with the 1991-92 school year.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 5 **CHAPTER 270**

AN ACT TO RAISE THE MINIMUM WAGE AND TO AUTHORIZE A TRAINING WAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.3(a) reads as rewritten:

"(a) Every employer shall pay to each employee who in any workweek performs any work, wages of at least ~~two dollars and seventy-five cents ($2.75) per hour effective July 1, 1979, two dollars and ninety cents ($2.90) per hour effective July 1, 1980, three dollars and ten cents ($3.10) per hour effective January 1, 1982 and three dollars and thirty-five cents ($3.35) per hour effective January 1, 1983 except as authorized below. If before June 1, 1989, the minimum wage set forth in the Fair Labor Standards Act is increased above three dollars and thirty-five cents ($3.35) per hour, the minimum wage required under this section shall increase by the same amount, but shall not increase above four dollars ($4.00) per hour, effective the same date the increase under the Fair Labor Standards Act is effective.~~ three dollars and eighty cents ($3.80) per hour effective January 1, 1992, and four dollars and twenty-five cents ($4.25) per hour effective January 1, 1993, except as otherwise provided in this section."

Sec. 2. G.S. 95-25.3 is amended by adding the following new subsection to read:

"(g) In order to prevent curtailment of opportunities for employment, an employer may, in lieu of the minimum wage prescribed by this section, pay a training wage to eligible persons in accordance with G.S. 95-25.3A."

Sec. 3. Chapter 95 of the General Statutes is amended by adding the following new section to read:

"*§ 95-25.3A. Training wage.*

(a) Any employer may, in lieu of the minimum wage prescribed by subsections (a) through (e) of G.S. 95-25.3, pay an eligible employee a training wage while such employee is:

(1) Employed for the period authorized in paragraph (h)(1)c.1. of this section, or

(2) Engaged in on-the-job training for the period authorized by paragraph (h)(1)c.2. of this section.

This training wage shall be a wage:

a. Of not less than three dollars and thirty-five cents ($3.35) per hour beginning January 1, 1992; and

b. Beginning January 1, 1993, eighty-five percent (85%) of the wage prescribed by G.S. 95-25.3(a).

(b) An employer may pay an eligible employee the training wage under subsection (a) of this section for a period that:

(1) Begins on or after January 1, 1992;

(2) Does not exceed the maximum period during which an employee may be paid such wage as determined under sub-subdivision (h)(1)c. of this section; and

(3) Ends before April 1, 1993.

(c) No eligible employee may be paid the training wage under subsection (a) of this section by an employer if:

(1) Any other individual has been laid off by such employer from the position to be filled by such eligible employee or from any substantially equivalent position; or

(2) Such employer has terminated the employment of any regular employee or otherwise reduced the number of employees with the intention of filling the vacancy so created by hiring an employee to be paid such training wage.

(d) During any month in which employees are to be employed in an establishment and are to be paid a training wage under subsection (a) of this section, the proportion of these employee hours of employment to the total hours of employment of all employees in such establishment may not exceed a proportion equal to one-fourth of the total hours of employment of all employees in such establishment.

(e) No employer may take any action to displace employees, including partial displacements such as reduction in hours, wages, or employment benefits, for purposes of hiring individuals at the training wage under subsection (a) of this section. If the Commissioner determines that an employer has taken an action to displace employees, the Commissioner shall issue an order disqualifying such employer from employing any individual at such training wage.

(f) Each employer shall provide to any eligible employee who is to be paid the training wage under subsection (a) of this section a written notice before the employee begins employment stating the requirements of subsections (a) through (e) and subsections (h) through (k) of this section and the remedies provided by subsection (g) of this section for violations of any of these requirements. The Commissioner shall provide to employers upon request the text of the notice to be provided under this subsection.

(g) Any employer who takes an action to displace employees in violation of subsection (e) of this section shall be considered to have violated G.S. 95-25.20 and the remedies provided in that section shall apply to any such violation.

(h) For purposes of subsections (a) through (g) and subsection (i) of this section:

(1) 'Eligible employee' means, with respect to an employer, an individual who:

a. Is not a migrant agricultural worker or a seasonal agricultural worker, as defined in paragraphs (8) and (10) of section 3 of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. § 1802(8) and (10), without regard to subparagraph (B) of such paragraphs; and is not a nonimmigrant described in section 1101(a)(15)(H)(ii)(a) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(ii)(a);

b. Has not attained the age of 20 years; and

c. Is eligible to be paid the training wage under subsection (a) of this section by virtue of the duration of employment as follows:

1. An employee shall initially be eligible to be paid the training wage under subsection (a) of this section until the employee has been employed a cumulative total of 90 days at such wage.

2. An employee who has been employed by an employer at the training wage under subsection (a) of this section pursuant to paragraph c.1. of this subdivision may be employed by any other employer for an additional 90 days, if the employer meets the requirements of subsection (j) of this section.

3. The total period pursuant to paragraphs c.1. and c.2. of this subdivision that an employee may be paid the training wage under subsection (a) of this section may not exceed 180 days.

4. For purposes of this subdivision, the term 'employer' means, with respect to an employee, an employer who is required to withhold payroll taxes for such employee.

(2) 'On-the-job training' means training that is offered to an individual while employed in productive work that provides training, technical, and other related skills, and personal skills that are essential to the full and adequate performance of such employment.

(i) An individual shall provide the requisite proof of previous period or periods of employment with other employers for purposes of establishing whether the employee is an eligible employee pursuant to subsection (h) of this section. An employer's good faith reliance on the proof presented to the employer by an individual shall constitute a complete defense to a charge that the employer has violated subdivision (b)(2) of this section with respect to such individual. The

Commissioner shall issue regulations which shall be identical to the regulations issued by the United States Secretary of Labor defining the requisite proof required of an individual.

(j) An employer who wants to employ employees at the wage authorized by subsection (a) of this section for the period authorized by paragraph (h)(1)c.2. of this section shall:

(1) Notify the Commissioner annually of the positions at which such employees are to be employed at such wage;

(2) Provide on-the-job training to such employees which meets general criteria of the Commissioner issued by regulations which shall be identical to the regulations issued by the United States Secretary of Labor;

(3) Keep on file a copy of the training program which the employer will provide such employees;

(4) Provide a copy of the training program to the employees;

(5) Post in a conspicuous place in places of employment a notice of the types of jobs for which the employer is providing on-the-job training; and

(6) Send to the Commissioner on an annual basis a copy of such notice.

The Commissioner shall make available to the public upon request notices provided to the Commissioner by employers in accordance with subdivision (6) of this subsection.

(k) An employer who has complied with the requirements of the Fair Labor Standards Act for paying a training wage to a particular employee shall be deemed to have complied with the requirements of subsections (a) through (j) of this section."

Sec. 4. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 52 **CHAPTER 271**

AN ACT TO REGULATE FOREIGN CREDIT UNIONS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 54 of the General Statutes is amended by adding a new Article 14N to read:

"ARTICLE 14N.

"Foreign Credit Unions.

"*§ 54-109.106. Foreign Credit Unions.*

(a) A credit union organized under the laws of another state or territory of the United States may conduct business as a credit union in this State with the approval of the Administrator, provided credit

unions incorporated under Articles 14A through 14M of this Chapter are allowed to do business in the other state under conditions similar to these provisions. Before granting the approval, the Administrator must find that the foreign credit union:

(1) Is a credit union organized under laws similar to Articles 14A through 14M of this Chapter;

(2) Is financially solvent;

(3) Has account insurance through the federal government or any agency thereof;

(4) Is examined and supervised by a regulatory agency of the state in which it is organized;

(5) Will serve a field of membership not being served in this State or to adequately serve its members in this State;

(6) Operation by the credit union will not have adverse impact on the financial, economic or other interests of residents of this State.

(b) No foreign credit union may conduct business in this State unless it:

(1) Makes loans at such terms allowed under the provisions of Article 14G of this Chapter;

(2) Complies with the rules and regulations applicable to credit unions incorporated under Articles 14A through 14M of this Chapter;

(3) Agrees to furnish the Administrator a copy of the report of examination of its regulatory agency and such other documents or reports as may be requested or to submit to an examination as the Administrator deems necessary;

(4) Designates and maintains an agent for the service of process in this State.

(c) The Administrator may deny or revoke approval of a credit union to conduct business in this State if the Administrator finds that:

(1) The credit union fails to meet the requirements of subsection (a);

(2) The credit union fails to comply with the laws of this State or lawful rules or orders issued by the Administrator;

(3) The credit union has engaged in a pattern of unsafe or unsound credit union practices."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 282 **CHAPTER 272**

AN ACT TO EXTEND THE EXPIRATION DATE FOR PRIVATE CONTRACT PARTICIPATION BY THE DEPARTMENT OF TRANSPORTATION.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 860 of the 1987 Session Laws as amended by Section 1 of Chapter 749 of the 1989 Session Laws reads as rewritten:

"Sec. 2. This act is effective upon ratification, and shall expire ~~June 30, 1991.~~ June 30, 1993."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 416 **CHAPTER 273**

AN ACT TO MAKE TECHNICAL, CLARIFYING, AND CORRECTIVE CHANGES TO THE CHILD DAY CARE LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-86 reads as rewritten:

"§ *110-86. Definitions.*

Unless the context or subject matter otherwise requires, the terms or phrases used in this Article shall be defined as follows:

(1) ~~'Commission' means the~~ Commission. The Child Day-Care Commission created under this Article.

(2) ~~'Child Day Care' means any~~ Child day care. Any child care arrangement except seasonal recreational programs operated for less than four consecutive months in a year, wherein three or more children less than 13 years old receive care away from their own home by persons other than their parents, grandparents, aunts, uncles, brothers, sisters, first cousins, guardians or full-time custodians, or in the child's own home where other unrelated children are in care.

(3) ~~'Day care facility' includes~~ Child day care facility. Includes any child day care center or child care arrangement which provides day care for more than five children, not including the operator's own school-aged children, under the age of 13 years, on a regular basis of at least once per week for more than four hours but less than 24 hours per day, regardless of the time of day and

regardless of whether the same or different children attend. The following are not included: public schools; nonpublic schools whether or not accredited by the State Department of Public Instruction, which regularly and exclusively provide a course of grade school instruction to children who are of public school age; summer camps having children in full-time residence; Bible schools conducted during vacation periods; facilities licensed under Article 2 of Chapter 122C of the General Statutes; and cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment.

~~Day~~ Child day care facilities are separated by capacity into the following categories which determine applicable requirements and standards as established by the Commission pursuant to G.S. 110-88:

Facility Type
Large Home
Small Center
Medium Center
Large Center

The Commission shall establish the maximum capacity for each of the four categories of facilities.

(4) ~~'Child Day Care Home' means any~~ Child day care home. Any day care program or child care arrangement wherein any person not excluded in G.S. 110-86(2) provides day care on a regular basis of at least once per week for more than four hours per day for more than two children under 13 years of ~~age and fewer than six children~~ age, but not to exceed a maximum of eight children at any one time, wherever operated, and whether or not operated for profit. Of the children present at any one time, no more than five children shall be preschool-aged, as defined in rules adopted by the Commission. The four hour limit applies regardless of the time of day and regardless of whether the same or different children attend. Cooperative arrangements among parents to provide care for their own children as a convenience rather than for employment are not included.

To determine whether a child care arrangement is a child day care home, all children shall be counted except the operator's own school-aged children and school-aged children who reside at the location of the day care home. ~~Notwithstanding the limitation to five children prescribed~~

~~above, the day care home operator may care for three additional school-aged children.~~

(4.1) Department. Department of Human Resources.

(5) Repealed by Session Laws 1975, c. 879, s. 15.

(6) ~~'License' means a~~ License. A license issued by the Secretary to any day-care facility which meets the statutory standards established under this Article.

(7) ~~'Operator' includes~~ Operator. Includes the owner, director or other person having primary responsibility for operation of a child day care facility subject to licensing.

(8) Secretary. The Secretary of the Department of Human Resources."

Sec. 2. G.S. 110-88 reads as rewritten:

"*§ 110-88. Powers and duties of the Commission.*

The Commission shall have the following powers and duties:

(1) To develop policies and procedures for the issuance of a license to any child day-care facility which meets all applicable standards established under this Article.

(2) To require inspections by and satisfactory written reports from representatives of local or State health agencies and fire and building inspection agencies and from representatives of the Department prior to the issuance of a license to any child day care facility.

(3) To make rules establishing minimum and reasonable standards for the operation of child day-care homes and the issuance of registration certificates. These rules shall establish minimum standards of health and safety that will be required in child day-care ~~plans~~ homes and will recognize the vital role that parents and guardians play in the monitoring of the care provided in child day-care ~~plans.~~ homes.

(4) Repealed by Session Laws 1975, c. 879, s. 15.

(5) To make rules and develop policies for implementation of this Article, including procedures for application, approval, renewal and revocation of licenses.

(6) To make rules for the issuance of a provisional license to a child day-care facility ~~which~~ that does not conform in every respect with the standards established in this Article provided that the Secretary ~~of Human Resources~~ finds that the operator is making a reasonable effort to conform to ~~such~~ the standards, except that a provisional license shall not be issued for more than one year and shall not be renewed.

(6a) To make rules for administrative action against a child day care facility or home when the Secretary's investigations pursuant to G.S. 110-105(a)(3) or ~~G.S. 110-105.1(4) [110-105.1(a)(4)]~~ G.S. 110-105.1(a)(4) substantiate that child abuse or neglect did occur in the facility or home. The type of sanction shall be determined by the severity of the incident and the probability of reoccurrence. The administrative actions shall include written warnings and special provisional licenses or registration certificates.

A written warning may be issued which shall specify the corrective action to be taken by the operator. The Department shall make an unannounced visit within one month after issuance of the written warning to determine whether the corrective action has occurred. If the corrective action has not occurred, a special provisional license or registration certificate may be issued.

When a special provisional license or registration certificate is issued, it shall require specific corrective action. It shall be in effect for six months from imposition and may not be renewed. The special provisional license or registration certificate and the letter which clearly states the reasons for the special provisional status shall be posted where parents can see them. Under the terms of the special provisional license or registration, the facility or home shall not enroll any new children until notified by the Department that it is satisfied the abusive or neglectful situation no longer exists. The Department shall make three unannounced visits during the period the special provisional license is in effect. Specific corrective action required by a written warning, special provisional license or special provisional registration may include the permanent removal from day care of the substantiated abuser or neglecter.

Nothing in this subdivision shall restrict the Secretary from using any other statutory or administrative remedies available.

(7) To develop and promulgate standards which reflect higher levels of day care than required by the standards established by this Article, which will recognize better physical facilities, more qualified personnel, and higher quality programs. The Commission ~~shall be empowered to issue~~ may adopt rules for the issuance of two grades of licenses: an 'A' license for compliance with the provisions of the Article, and an 'AA' license for those licensees meeting the

voluntary higher standards promulgated by the Commission.

(8) To develop a procedure by which the Department ~~[of Human Resources]~~ shall furnish such forms as may be required for implementation of this Article.

(9) Repealed by Session Laws 1985, c. 757, s. 156(66), effective October 1, 1985.

(10) To develop rules for the issuance of a temporary license which shall expire in 90 days and which may be issued to the operator of a new facility or to the operator of a previously licensed facility when a change in ownership or location ~~occurs, provided the operator applied for a license prior to the change in status.~~ occurs.

(11) To develop rules for the care of sick children in facilities and homes."

Sec. 3. G.S. 110-90(5) reads as rewritten:

"(5) To revoke the license of any day care facility which ceases to meet the standards established by this ~~Article.~~ Article and rules on these standards adopted by the Commission, or to deny a license to any applicant that fails to meet the standards or the rules. ~~Such~~ These revocations and denials shall be done in accordance with the procedures set out in G.S. 150B and this Article and rules adopted by the Commission."

Sec. 4. G.S. 110-90.1 reads as rewritten:

"*§ 110-90.1. Qualification for staff in a child day-care home.*

No child day-care home shall be registered if that home is operated by or employs any person who has been convicted of a crime involving child abuse, child neglect, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotics or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children. The person registered to provide care in a child day-care home shall be at least 18 years of age and literate. A person who is less than 18 years of age, but at least 16 years of age, may work ~~on~~ in a child day-care home if under the direct supervision of the person registered to provide the care."

Sec. 5. G.S. 110-91 reads as rewritten:

"*§ 110-91. Mandatory standards for a license.*

The following standards shall be complied with by all day-care facilities, except as otherwise provided in this Article. These shall be the only required standards for the issuance of a license by the Secretary ~~of Human Resources~~ under the policies and procedures of the Commission except that the Commission may, in its discretion, adopt less stringent standards for facilities subject to licensing but

which provide care on a temporary, part-time, drop-in, seasonal, after-school or other than a full-time basis.

(1) Medical Care and Sanitation. -- The Commission for Health Services shall adopt rules which establish minimum sanitation standards for day-care facilities and their personnel. The sanitation rules adopted by the Commission for Health Services shall cover such matters as the cleanliness of floors, walls, ceilings, storage spaces, utensils, and other facilities; adequacy of ventilation; sanitation of water supply, lavatory facilities, toilet facilities, sewage disposal, food protection facilities, bactericidal treatment of eating and drinking utensils, and solid-waste storage and disposal; methods of food preparation and serving; ~~health of staff members;~~ infectious disease control; sleeping facilities; and such other items and facilities as are necessary in the interest of the public health. These rules shall be developed in consultation with the Department.

The Commission shall adopt rules to establish minimum requirements for child and staff health assessments and medical care procedures. These rules shall be developed in consultation with the Department of Environment, Health, and Natural Resources. Each child shall have a ~~medical examination by~~ health assessment before being admitted or within 30 days following admission to a day-care facility. The assessment shall be done by: (i) a licensed ~~physician~~ physician, ~~or his~~ (ii) the physician's authorized agent who is currently approved by the North Carolina Board of Medical Examiners, or comparable certifying board in any state contiguous to North Carolina, (iii) a certified nurse practitioner, or (iv) a public health nurse meeting the Department of Environment, Health, and Natural Resources' Standards for Early Periodic Screening, Diagnosis, and Treatment Program. ~~prior to being admitted or within 30 days following admission to a day-care facility; a record of such examination~~ A record of each child's assessment shall be on file in the records of the ~~facility, provided, however, that~~ facility. However, no ~~medical certificate~~ health assessment shall be required of any child who is and has been in normal health and whose parent, guardian, or full-time custodian objects in writing to a ~~medical examination~~ health assessment on religious grounds which conform to the teachings and practice of any recognized church or religious denomination.

Each child shall be immunized in ~~such~~ a manner ~~as to meet~~ that meets the requirements of ~~Articles 9 and 9A of Chapter 130~~ Article 6 of Chapter 130A of the General ~~Statutes.~~ Statutes and the pertinent rules adopted by the Commission for Health Services.

Each day-care facility shall have a plan of emergency medical care which shall include provisions for communication with and transportation to a specified medical resource, unless otherwise previously instructed. No child receiving day care shall be administered any drug or other medication without specific written instructions from a physician or the child's parent, guardian or full-time custodian. ~~Medical~~ Emergency information on each child in care, including the names, addresses, and telephone numbers of the child's physician and parents, legal guardian or full-time custodian shall be readily available to the staff of the day-care facility ~~in the records of the facility in accordance with a form approved by the Commission for this purpose.~~ while children are in care.

Nonprofit, tax-exempt organizations that provide prepared meals to day care centers only are considered day care centers for purposes of compliance with appropriate sanitation standards.

~~There shall be a separate bed, cot or mat, equipped with individual linen, for each child to use during rest periods, except for school-aged children; if a mat is used, it shall be of a waterproof, washable material at least two inches thick and shall be stored so that the floor side does not touch the sleeping side. Beds and linens used by members of the household of the operator shall not be used for children receiving care in the day-care facility.~~

(2) Health-Related Activities. -- Each child in a day-care facility shall receive nutritious food and refreshments under rules to be adopted by the Commission. After consultation with the Division of Health Services of the Department of Environment, Health, and Natural Resources, nutrition standards shall provide for specific requirements for infants. Nutrition standards shall provide for specific requirements for children older than infants, including a daily food plan for meals and snacks served that shall be adequate for good nutrition. The number and size of servings and snacks shall be appropriate for the ages of the children and shall be planned according to the number of hours the child is in care. Menus for meals and snacks

shall be planned at least one week in advance, dated, and posted where they can be seen by parents.

Each day-care facility shall arrange for each child in care to be out-of-doors each day if weather conditions permit.

Each day-care facility shall have a rest period for each child in care after lunch or at some other appropriate time.

No day-care facility shall care for more than 25 children in one group. Facilities providing care for 26 or more children shall provide for two or more groups according to the ages of children and shall provide separate supervisory personnel for each group.

(3) Location. -- Each day-care facility shall be located in an area which is free from conditions which are deemed hazardous to the physical and moral welfare of the children in care in the opinion of the Commission.

(4) Building. -- Each day-care facility shall be located in a building which meets the requirements of the North Carolina Building Code under standards which shall be developed by the Building Code Council, subject to adoption by the Commission specifically for day-care facilities, including facilities operated in a private residence. Such standards shall be consistent with the provisions of this Article.

(5) Fire Prevention. -- All day-care facilities shall be inspected annually by a local fire department or a volunteer fire department, using fire-prevention standards which shall be developed by the State Insurance Department after consultation with local fire departments and volunteer fire departments, subject to adoption by the Commission.

(6) Space and Equipment Requirements. -- There shall be no less than 25 square feet of indoor space for each child for which a day-care facility is licensed, exclusive of closets, passageways, kitchens, and bathrooms, and such floor space shall provide during rest periods 200 cubic feet of airspace per child for which the facility is licensed. There shall be adequate outdoor play area for each child under rules adopted by the Commission which shall be related to the size and type of facility, availability and location of outside land area, except in no event shall the minimum required exceed 75 square feet per child, which area shall be protected to assure the safety of the children receiving day care by an adequate fence or other protection; provided, however, that a facility operated in a public

school shall be deemed to have adequate fencing protection; provided, also, that a facility operating exclusively during the evening and early morning hours, between 6:00 P.M. and 6:00 A.M., need not meet the outdoor play area requirements mandated by this subdivision.

Each day-care facility shall provide equipment and furnishings that are child size, sturdy, safe, and in good repair. The Commission shall adopt standards to establish minimum requirements for equipment appropriate for the size facility being operated pursuant to G.S. 110-86(3). Space shall be available for proper storage of beds, cribs, mats, cots, sleeping garments, and linens as well as designated space for each child's personal belongings.

(7) Staff-Child Ratio. -- In determining the staff-child ratio, all children younger than 13 years shall be counted. The Commission shall adopt rules regarding staff-child ratios, group sizes and multi-age groupings for each category of facility provided that such rules and regulations shall be no less stringent than those currently required for staff-child ratios as enacted in Section 156(e) of Chapter 757 of the 1985 Session Laws.

(8) Qualifications for Staff. -- Each day-care facility shall be under the direction or supervision of a literate person at least 21 years of age. All staff counted in determining the required staff-child ratio shall be at least 16 years of age, provided that persons younger than 18 years of age work under the direct supervision of a literate staff person who is at least 21 years of age. No person shall be an operator of nor be employed in a day-care facility who has been convicted of a crime involving child neglect, child abuse, or moral turpitude, or who is an habitually excessive user of alcohol or who illegally uses narcotic or other impairing drugs, or who is mentally or emotionally impaired to an extent that may be injurious to children.

The Commission shall adopt standards to establish minimum qualifications for operators, supervisors, caregivers and other staff who have direct contact with the children. These standards shall reflect training, experience, education or credentialing and shall be appropriate for the size facility being operated according to the categories defined in G.S. 110-86(3). It is the intent of this provision to guarantee that all children in day care are cared for by qualified people but also to recognize that qualifications for good child care may not be limited to

formal education or training standards. To this end, the standards adopted by the Commission pertaining to training and educational requirements shall include provision that these requirements may be met by informal as well as formal training and educational experience. No requirements may interfere with the teachings or doctrine of any established religious organization.

(9) Records. -- Each day-care facility shall keep accurate records on each child receiving care in the day-care facility in accordance with a form furnished or approved by the Commission, and shall submit attendance reports as required by the Department.

Each day-care facility shall keep accurate records on each staff member or other person delegated responsibility for the care of children in accordance with a form approved by the Commission.

All records of any day-care facility, except financial records, shall be subject to review by the Secretary ~~of Human Resources~~ or by duly authorized representatives of the Department or a cooperating agency who shall be designated by the Secretary.

Any effort to falsify information provided to the Department shall be deemed by the Secretary to be evidence of violation of this Article on the part of the operator or sponsor of the day-care facility and shall constitute a cause for revoking or denying a license to such day-care facility.

(10) Each operator or staff member shall truly and honestly show each child in his care true love, devotion and tender care.

Each day-care facility shall have a written policy on discipline, which policy describes the methods and practices used to discipline children enrolled in that facility. This written policy shall be discussed with, and a copy given to, each child's parent prior to the first time the child attends the facility. Subsequently, any change in discipline methods or practices shall be communicated in writing to the parents prior to the effective date of the change.

(11) Staff Development. -- The Commission shall adopt minimum standards for ongoing staff development for facilities. These standards shall include ~~a requirement that each day-care facility shall have a written staff development plan that shall include training activities for each staff~~

~~member.~~ requirements for ongoing inservice training for all staff."

Sec. 6. G.S. 110-92 reads as rewritten:

"§ *110-92. Duties of State and local agencies.*

When requested by an operator of a day-care facility or by the Secretary ~~of Human Resources~~, it shall be the duty of local and district health departments to visit and inspect a day-care facility to determine whether the facility complies with the health and sanitation standards required by this Article and with the minimum ~~health and~~ sanitation standards adopted as rules by the Commission for Health Services as authorized by G.S. 110-91(1), and to submit written reports on such visits or inspections to the Department ~~of Human Resources~~ on forms approved and provided by the Department of Environment, Health, and Natural Resources.

When requested by an operator of a day-care facility or by the Secretary, it shall be the duty of the local and district health departments, and any building inspector, fire prevention inspector, or fireman employed by local government, or any fireman having jurisdiction, or other officials or personnel of local government to visit and inspect a day-care facility for the purposes specified in this Article, including plans for evacuation of the premises and protection of children in case of fire, and to report on such visits or inspections in writing to the Secretary ~~of Human Resources on forms provided by the Department~~ so that such reports may serve as the basis for action or decisions by the Secretary or Department as authorized by this Article."

Sec. 7. G.S. 110-93(c) reads as rewritten:

"(c) Each licensed operator of ~~[a]~~ a child day-care facility must annually apply in order to renew ~~his~~ the license and must accompany such renewal application with such supporting data and reports as are required to show conformity with the standards established under this Article."

Sec. 8. G.S. 110-94 reads as rewritten:

"§ *110-94. Administrative Procedure Act.*

The provisions of General Statutes Chapter 150B known as the Administrative Procedure Act shall be applicable to the ~~Child Day-Care~~ Commission and to the rules it adopts. The Administrative Procedure Act shall also apply to child day care contested cases. However, a child day care operator shall have 30 days to file a petition for a contested case pursuant to G.S. 150B-23. The case hearing shall be scheduled to be held within 120 days of the date the petition for a hearing is received, pursuant to G.S. 150B-23(a), in any contested case resulting from administrative action taken by the Department to revoke a license, registration certificate, or Letter of Compliance or

from administrative action taken in a situation in which child abuse or neglect in a child day care facility or home has been substantiated. A request for continuance of a hearing shall be granted upon a showing of good cause by either party."

Sec. 9. G.S. 110-103.1(a) reads as rewritten:

"(a) A civil penalty ~~of not more than one thousand dollars ($1,000)~~ may be levied against any ~~licensee~~ operator of any child day care facility or home who violates any provision of this Article. The penalty shall not exceed one thousand dollars ($1,000) for each violation documented on any given date. Every ~~licensee~~ operator shall be provided a schedule of the civil penalties established by the Commission pursuant to this Article."

Sec. 10. G.S. 110-105(a) reads as rewritten:

"§ *110-105. Authority to inspect facilities.*

(a) The Commission shall adopt standards and rules under this subsection which provide for the following types of inspections:

(1) An initial licensing or certification inspection, which shall not occur until the administrator of the facility receives prior notice of the initial inspection or certification visit;

(2) A plan for routine inspections of all facilities, which shall be confidential unless a court orders its disclosure, and which shall be conducted without prior notice to the facility;

(3) An inspection that may be conducted without notice, if there is probable cause to believe that an emergency situation exists or there is a complaint alleging a violation of licensure law. When the Department is notified by the county director of social services that the director has received a report of child abuse or neglect in a child day-care facility, or when the Department is notified by any other person that alleged abuse or neglect has occurred in a facility, the Commission's rules shall provide for an inspection conducted without notice to the child day-care facility to determine whether the alleged abuse or neglect has occurred. This inspection shall be conducted within seven calendar days of receipt of the report, and when circumstances warrant additional visits, the second inspection shall be conducted within one month of the first visit.

The Secretary or ~~his~~ the Secretary's designee, upon presenting appropriate credentials to the operator of the child day-care facility, is authorized to perform inspections in accordance with the standards and rules promulgated under this subsection. The Secretary or the Secretary's designee may inspect any area of a building in which there is reasonable evidence that children are in care."

Sec. 11. G.S. 7A-517(5) reads as rewritten:

"(5) Caretaker. -- Any person other than a parent who has the care of a juvenile. Caretaker includes any blood relative, stepparent, foster parent, house parent, cottage parent, or other person supervising a juvenile in a child-care facility. 'Caretaker' also means any person who has the responsibility for the care of a juvenile in a ~~day-care plan~~ child day care home or facility as defined in G.S. 110-86 and includes any person who has the approval of the care provider to assume responsibility for the juveniles under the care of the care provider."

Sec. 12. G.S. 143B-168.5 reads as rewritten:

"*§ 143B-168.5. Child ~~Day-Care Commission~~ Day Care -- special unit.*

There is established within the ~~North Carolina Child Day Care Commission~~ Department of Human Resources a special unit to deal primarily with ~~day-care licensing and registration~~ violations involving child abuse and ~~neglect.~~ neglect in child day care arrangements. The Child Day Care Commission shall make rules ~~sufficient to define the duties of the special unit and to describe how it is to function as a special unit within the Commission as a whole.~~ for the investigation of reports of child abuse or neglect and for administrative action when child abuse or neglect is substantiated, pursuant to G.S. 110-88(6a), 110-105, and 110-105.1."

Sec. 13. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 421 **CHAPTER 274**

AN ACT TO CLARIFY G.S. 13-1, TO RESTORE THE CITIZENSHIP OF PERSONS CONVICTED IN ANOTHER STATE ON THE SAME BASIS AS PERSONS CONVICTED IN THIS STATE OR IN FEDERAL COURT, AND TO SIMPLIFY THE PROCEDURE FOR FILING THE CERTIFICATE OF RESTORATION AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 13-1 reads as rewritten:

"*§ 13-1. Restoration of citizenship.*

Any person convicted of a crime, whereby the rights of citizenship are forfeited, shall have such rights automatically restored upon the occurrence of any one of the following conditions:

(1) The unconditional discharge of an inmate by the State Department of Correction or the North Carolina Department

of Correction, of a probationer by the State Department of Correction, or of a parolee by the Department of Correction; or of a defendant under a suspended sentence by the court.

(2) The unconditional pardon of the offender.

(3) The satisfaction by the offender of all conditions of a conditional pardon.

(4) With regard to any person convicted of a crime against the United States, the unconditional discharge of such person by the agency of the United States having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon.

(5) With regard to any person convicted of a crime in another state, the unconditional discharge of such person by the agency of that state having jurisdiction of such person, the unconditional pardon of such person or the satisfaction by such person of a conditional pardon."

Sec. 2. G.S. 13-2 reads as rewritten:

"*§ 13-2. Issuance and filing of certificate or order of restoration.*

(a) The agency, department, or court having jurisdiction over the inmate, probationer, parolee or defendant at the time his rights of citizenship are restored under the provisions of G.S. 13-1(1) shall immediately issue a certificate or order in duplicate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship.

The original of such certificate or order shall be promptly transmitted to the clerk of the General Court of Justice in the county where the official record of the case from which the conviction arose is filed. The clerk shall then file the certificate or order without charge with the official record of the case.

(b) In the case of a person convicted of a crime against another state or the United States, whose rights to citizenship have been restored according to G.S. 13-1, the following provisions shall apply:

(1) It shall be the duty of the clerk of the court in the county where such person resides, upon a showing by such person or his representative that the conditions of G.S. 13-1 have been met, to issue the certificate evidencing the offender's unconditional discharge and specifying the restoration of his rights of citizenship. ~~described in this section.~~ For purposes of this ~~section~~ subsection, the fulfillment of the conditions of G.S. 13-1 shall be considered met upon the presentation to the clerk of any paper writing from the agency of any other state or of the United States ~~government~~ which had jurisdiction over such person, which shows that the conditions of G.S. 13-1 have been met.

(2) The certificate described in ~~this section~~ subdivision (b)(1) shall be filed by the clerk of the General Court of Justice in the county in which such person resides ~~as though it were a civil action bearing such person's name~~.

~~(3)~~

The provisions of this ~~section~~ subsection apply equally to conditional and unconditional pardons by the governor of any other state or by the President of the United States, as well as unconditional discharges by the agency of another state or of the United States having jurisdiction over said person."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 449 **CHAPTER 275**

AN ACT TO STRENGTHEN THE SEDIMENTATION POLLUTION CONTROL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113A-52 is amended by adding a new subdivision to read:

"(10a) 'Tract' means all contiguous land and bodies of water being disturbed or to be disturbed as a unit, regardless of ownership."

Sec. 2. G.S.113A-57 reads as rewritten:

"*§ 113A-57. Mandatory standards for land-disturbing activity.*

No land-disturbing activity subject to this Article shall be undertaken except in accordance with the following mandatory requirements:

(1) No land-disturbing activity during periods of construction or improvement to land shall be permitted in proximity to a lake or natural watercourse unless a buffer zone is provided along the margin of the watercourse of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity. Waters that have been classified as trout waters by the Environmental Management Commission shall have an undisturbed buffer zone 25 feet wide or of sufficient width to confine visible siltation within the twenty-five percent (25%) of the buffer zone nearest the land-disturbing activity, whichever is greater. Provided, however, that the Sedimentation Control Commission may approve plans which include land-disturbing activity along trout waters when the

duration of said disturbance would be temporary and the extent of said disturbance would be minimal. This subdivision shall not apply to a land-disturbing activity in connection with the construction of facilities to be located on, over, or under a lake or natural watercourse.

(2) The angle for graded slopes and fills shall be no greater than the angle which can be retained by vegetative cover or other adequate erosion-control devices or structures. In any event, slopes left exposed will, within 30 working days of completion of any phase of grading, be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion.

(3) Whenever land-disturbing activity is undertaken on a tract comprising more than one acre, if more than one ~~contiguous~~ acre is uncovered, the person conducting the land-disturbing activity shall install such sedimentation and erosion control devices and practices as are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract, and shall plant or otherwise provide a permanent ground cover sufficient to restrain erosion after completion of construction or development within a time period to be specified by rule of the Commission.

(4) No person shall initiate any land-disturbing activity on a tract if more than one ~~contiguous~~ acre is to be uncovered unless, 30 or more days prior to initiating the activity, an erosion and sedimentation control plan for such activity is filed with the agency having jurisdiction."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 855 **CHAPTER 276**

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW REGARDING BENEFIT CHARGES TO EMPLOYER ACCOUNTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c)(2)b. reads as rewritten:

"b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid

prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2B) and (6A); or (vi) separation due to leaving for disability or health condition shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer for benefit years ending on or before June 30, 1992, where benefits were paid as a result of a discharge due directly to the reemployment of a veteran mandated by the Veteran's Reemployment Rights Law, 38 USCA § 2021, *et seq.*

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the

Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 901 **CHAPTER 277**

AN ACT TO CLARIFY THE AUTHORITY OF COUNTIES AND CITIES TO PROVIDE DEFERRED COMPENSATION BENEFITS TO EMPLOYEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-93 is amended by adding a new subsection to read:

"(e) The board of commissioners may provide a deferred compensation plan. Where the board of commissioners provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S. 159-30 and G.S. 159-31. Counties may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan."

Sec. 2. G.S. 160A-163 is amended by adding a new subsection to read:

"(f) The council may provide a deferred compensation plan. Where the council provides a deferred compensation plan, the investment of funds for the plan shall be exempt from the provisions of G.S. 159-30 and G.S. 159-31. Cities may invest deferred compensation plan funds in life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, or other forms of investments approved by the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

H.B. 928 **CHAPTER 278**

AN ACT TO ELIMINATE BOND IN ACTIONS WHERE THE STATE, A MUNICIPALITY OR A COUNTY IS THE PLAINTIFF.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1A-1, Rule 55(c), reads as rewritten:

"(c) Service by publication. -- When service of the summons has been made by published notice, no judgment shall be entered on default until the plaintiff shall have filed a bond, approved by the court, conditioned to abide such order as the court may make touching the restitution of any property collected or obtained by virtue of the judgment in case a defense is thereafter permitted and sustained; provided, that in actions involving the title to real estate or to ~~foreclosure~~ foreclose mortgages thereon or in actions in which the State of North Carolina or a county or municipality thereof is the plaintiff such bond shall not be required."

Sec. 2. This act is effective upon ratification and applies to actions commenced on or after that date.

In the General Assembly read three times and ratified this the 12th day of June, 1991.

S.B. 126 **CHAPTER 279**

AN ACT TO INCREASE THE STATE EFFORT TO PROVIDE REMEDIATION.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Community Colleges and the Board of Governors of The University of North Carolina shall continue progress in working towards cooperative agreements for the provision of local remediation.

Sec. 2. The State Board of Community Colleges shall develop an appropriate reporting system to enable local community colleges to provide annual performance data to local high schools on their students that enter community colleges. The reporting system shall be implemented as of the first day of the 1991 Community College fall quarter.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 269 **CHAPTER 280**

AN ACT TO ALLOW THE HIGHWAY FUND TO BE REIMBURSED BY THE HIGHWAY TRUST FUND FOR THE AMOUNT OF HIGHWAY FUND REVENUE USED TO MATCH FEDERAL FUNDS APPLIED TO A HIGHWAY TRUST FUND PROJECT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-176(c) reads as rewritten:

"(c) If funds are received under 23 U.S.C. Chapter 1, Federal-Aid Highways, for a project for which funds in the Trust Fund ~~are allocated, an amount equal to~~ may be used, the amount of federal funds received plus the amount of any funds from the Highway Fund that were used to match the federal funds may be transferred by the Secretary of Transportation from the Trust Fund to the Highway Fund and used for projects in the Transportation Improvement Program."

Sec. 2. This act is effective upon ratification and applies to federal funds received on or after July 1, 1990, and funds in the Highway Fund used on or after that date to match the federal funds.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 377 **CHAPTER 281**

AN ACT TO ALLOW DISCRETION BY THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES AS TO WHETHER TO SEEK FEDERAL APPROVAL OF ANY INACTIVE HAZARDOUS SUBSTANCE OR WASTE DISPOSAL SITE CLEANUP AND AS TO WHETHER ENVIRONMENTAL PERMITS ARE REQUIRED FOR CLEANUPS CONDUCTED ENTIRELY ON-SITE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-310.3(d) reads as rewritten:

"(d) In any inactive hazardous substance or waste disposal site remedial action program implemented hereunder, the Secretary shall ascertain the most nearly applicable cleanup standard as would be applied under CERCLA/SARA, and ~~shall~~ may seek federal approval of any such program to insure concurrent compliance with federal standards. State standards may exceed and be more comprehensive than such federal standards. The Secretary shall assure concurrent compliance with applicable standards set by the Environmental Management Commission."

Sec. 2. G.S. 130A-310.3 is amended by adding a new subsection to read:

"(e) For any removal or remedial action conducted entirely on-site under this Part, to the extent that a permit would not be required under 42 U.S.C. § 9621(e) for a removal or remedial action conducted entirely on-site under CERCLA/SARA, the Secretary may grant a waiver from any State law or rule that requires that an environmental permit be obtained from the Department. The Secretary shall not waive any requirement that a permit be obtained unless the owner, operator, or other responsible party has entered into an agreement with the Secretary to implement a voluntary remedial action plan under G.S. 130A-310.9(b). Prior to granting a permit waiver, the Secretary shall invite public participation in the development of the remedial action plan in the manner set out in G.S. 130A-310.4."

Sec. 3. Part 3 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-310.13. Short title.*

This Part shall be known and may be cited as the Inactive Hazardous Sites Response Act of 1987."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 399 **CHAPTER 282**

AN ACT TO REDUCE FROM SIX TO THREE MONTHS THE TIME FOR PRESENTATION OF CLAIMS AGAINST A DECEDENT'S ESTATE AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-14-1(a) reads as rewritten:

"*§ 28A-14-1. Notice for claims.*

(a) Every personal representative and collector after the granting of letters shall notify all persons, firms and corporations having claims against the decedent to present the same to such personal representative or collector, on or before a day to be named in such notice, which day must be at least ~~six~~ three months from the day of the first publication or posting of such notice. The notice shall set out a mailing address for the personal representative or collector. The notice shall be published once a week for four consecutive weeks in a newspaper qualified to publish legal advertisements, if any such newspaper is published in the county. If there is no newspaper

published in the county, but there is a newspaper having general circulation in the county, then at the option of the personal representative, or collector, the notice shall be published once a week for four consecutive weeks in the newspaper having general circulation in the county and posted at the courthouse or the notice shall be posted at the courthouse and four other public places in the county. Personal representatives are not required to publish or mail notice to creditors if the only asset of the estate consists of a claim for damages arising from death by wrongful act. When any collector or personal representative of an estate has published or mailed the notice provided for by this section, no further publication or mailing shall be required by any other collector or personal representative."

Sec. 2. This act is effective upon ratification and applies to the administration of the estates of decedents dying on or after January 1, 1992.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 594 **CHAPTER 283**

AN ACT RELATING TO ELIGIBILITY TO SERVE ON A COMMUNITY COLLEGE BOARD OF TRUSTEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115D-12(a) reads as rewritten:

"(a) Each community college established or operated pursuant to this Chapter shall be governed by a board of trustees consisting of 13 members, or of additional members if selected according to the special procedure prescribed by the third paragraph of this subsection, who shall be selected by the following agencies.

Group One -- four trustees, elected by the board of education of the public school administrative unit located in the administrative area of the institution. If there are two or more public school administrative units, whether city or county units, or both, located within the administrative area, the trustees shall be elected jointly by all of the boards of education of those units, each board having one vote in the election of each trustee, except as provided in G.S. 115D-59. No board of education shall elect any person employed by the board of education to serve as a trustee, however, any such person currently serving on a board of trustees shall be permitted to fulfill the unexpired portion of the trustee's current term.

Group Two -- four trustees, elected by the board of commissioners of the county in which the institution is located. Provided, however, if the administrative area of the institution is composed of two or more

counties, the trustees shall be elected jointly by the boards of commissioners of all those counties, each board having one vote in the election of each trustee. Provided, also, the county commissioners of the county in which the community college has established a satellite campus may elect an additional two members if the board of trustees of the community college agrees. Should the boards of education or the boards of commissioners involved be unable to agree on one or more trustees the senior resident superior court judge in the superior court district or set of districts as defined in G.S. 7A-41.1 where the institution is located shall fill the position or positions by appointment.

Group Three -- four trustees, appointed by the Governor.

Group Four -- the president of the student government or the chairman of the executive board of the student body of each community college established pursuant to G.S. 115D shall be an ex officio nonvoting member of the board of trustees of each said institution."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 769 **CHAPTER 284**

AN ACT TO ASSURE THAT THE NORTH CAROLINA WORKERS' COMPENSATION ACT EXTENDS TO INJURIES OUTSIDE THE STATE FOR EMPLOYEES WHOSE PRINCIPAL PLACE OF EMPLOYMENT IS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-36 reads as rewritten:

"*§ 97-36. Accidents taking place outside State; employees receiving compensation from another state.*

Where an accident happens while the employee is employed elsewhere than in this State and the accident is one which would entitle him or his dependents or next of kin to compensation if it had happened in this State, then the employee or his dependents or next of kin shall be entitled to compensation (i) if the contract of employment was made in this State, ~~or~~ (ii) if the employer's principal place of business is in this ~~State;~~ State, or (iii) if the employee's principal place of employment is within this State; provided, however, that if an employee or his dependents or next of kin shall receive compensation or damages under the laws of any other state nothing herein contained shall be construed so as to permit a total compensation for the same injury greater than is provided for in this Article."

Sec. 2. This act becomes effective October 1, 1991, and applies to all claims arising on or after that date.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 356 **CHAPTER 285**

AN ACT MAKING A QUALIFIED EXCEPTION FROM THE PUBLIC RECORDS ACT FOR CERTAIN GEOGRAPHICAL INFORMATION SYSTEMS.

The General Assembly of North Carolina enacts:

Section 1. Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of Chapter 132 of the General Statutes. The county or city shall provide public access to such systems by public access terminals and other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media shall not constitute a resale or use of the data for trade or commercial purposes.

Sec. 2. This act applies to Catawba and Lincoln Counties and the Cities of Conover, Hickory, Lincolnton, and Newton only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 412 **CHAPTER 286**

AN ACT TO ENCOURAGE RECYCLING OF HAZARDOUS WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294.1(l) reads as rewritten:

"(l) A commercial hazardous waste storage, treatment, or disposal facility shall pay annually, in addition to the fees applicable to all hazardous waste storage, treatment, or disposal facilities, a single tonnage charge of one dollar and seventy-five cents ($1.75) per ton or any part thereof of hazardous waste stored, treated, or disposed of at

the facility. A manufacturing facility that receives hazardous waste generated from the use of a product typical of its manufacturing process for the purpose of recycling is exempt from this tonnage charge. A facility must have a permit issued under this Article which includes the recycling activity and specifies the type and amount of waste allowed to be received from off-site for recycling."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 422 **CHAPTER 287**

AN ACT TO AMEND THE DEFINITION OF THE TERM "OTHER WASTE" AS USED IN THE WATER AND AIR POLLUTION STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213(18) reads as rewritten:

"(18) 'Waste' shall mean and include the following:

a. 'Sewage,' which shall mean water-carried human waste discharged, transmitted, and collected from residences, buildings, industrial establishments, or other places into a unified sewerage system or an arrangement for sewage disposal or a group of such sewerage arrangements or systems, together with such ground, surface, storm, or other water as may be present.

b. 'Industrial waste' shall mean any liquid, solid, gaseous, or other waste substance or a combination thereof resulting from any process of industry, manufacture, trade or business, or from the development of any natural resource.

c. 'Other waste' means sawdust, shavings, lime, refuse, offal, oil, tar chemicals, dissolved and suspended solids, sediment, and all other substances, except industrial ~~waste and~~ waste, sewage, and toxic chemicals which may be discharged into or placed in such proximity to the water that drainage therefrom may reach the water.

d. 'Toxic waste' means that waste, or combinations of wastes, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through

food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions in reproduction) or physical deformities, in such organisms or their offspring."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 442 **CHAPTER 288**

AN ACT TO REQUIRE NOTIFICATION TO THE DISTRICT ATTORNEY, THE VICTIM, THE VICTIM'S FAMILY, AND THE ARRESTING LAW ENFORCEMENT AGENCY WHENEVER A PRISONER IS BEING CONSIDERED FOR PAROLE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1380.2 is amended by adding a new subsection to read:

"(k) Whenever the Parole Commission will be considering for parole a prisoner convicted of second-degree murder, assault with a deadly weapon with intent to kill inflicting serious injury, assault with a deadly weapon inflicting serious injury, or assault with a deadly weapon with intent to kill under any provision of this Article, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

(1) The prisoner;

(2) The district attorney of the district where the prisoner was convicted;

(3) The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified; and

(4) Any of the victim's immediate family members who have requested in writing to be notified."

Sec. 2. G.S. 15A-1371(b) reads as rewritten:

"(b) Consideration for Parole. -- The Parole Commission must consider the desirability of parole for each person sentenced as a felon for a maximum term of 18 months or longer:

(1) Within the period of 90 days prior to his eligibility for parole, if he is ineligible for parole until he has served more than a year; ~~or~~

(2) Within the period of 90 days prior to the expiration of the first year of the sentence, if he is eligible for parole at any

time. Whenever the Parole Commission will be considering for parole a prisoner who, if released, would have served less than half of the maximum term of his sentence, the Commission must notify the prisoner and the district attorney of the district where the prisoner was convicted at least 30 days in advance of considering the parole. If the district attorney makes a written request in such cases, the Commission must publicly conduct its consideration of parole. Following its consideration, the Commission must give the prisoner written notice of its decision. If parole is denied, the Commission must consider its decision while the prisoner is eligible for parole at least once a year until parole is granted and must give the prisoner written notice of its decision at least once a ~~year.~~ year; or

(3) Whenever the Parole Commission will be considering for parole a prisoner convicted of first- or second-degree murder, first-degree rape, or first-degree sexual offense, the Commission must notify, at least 30 days in advance of considering the parole, by first class mail at the last known address:

a. The prisoner;

b. The district attorney of the district where the prisoner was convicted;

c. The head of the law enforcement agency that arrested the prisoner, if the head of the agency has requested in writing that he be notified;

d. Any of the victim's immediate family members who have requested in writing to be notified; and

e. The victim, in cases of first-degree rape or first-degree sexual offense, if the victim has requested in writing to be notified.

The Parole Commission must consider any information provided by any such parties before consideration of parole. The Commission must also give the district attorney, the head of the law enforcement agency who has requested in writing to be notified, the victim, or any member of the victim's immediate family who has requested to be notified, written notice of its decision within 10 days of that decision."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 782 **CHAPTER 289**

AN ACT TO ALLOW THE TOWN OF MOORESVILLE TO EXERCISE EXTRATERRITORIAL LAND-USE REGULATION WITHIN ONE MILE OF ITS SATELLITE CORPORATE LIMITS AND TO ALLOW THE CITIES OF STANLEY AND MOUNT HOLLY TO EXERCISE THEIR EXTRATERRITORIAL JURISDICTION NOT MORE THAN TWO MILES BEYOND THEIR CORPORATE LIMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-58.4 reads as rewritten:

"§ *160A-58.4. Extraterritorial powers.*

Satellite corporate limits shall ~~not~~ be considered a part of the city's corporate limits for the purposes of extraterritorial land-use regulation pursuant to G.S. 160A-360, ~~or~~ but not for purposes of abatement of public health nuisances pursuant to G.S. 160A-193. However, a city's power to regulate land use pursuant to Chapter 160A, Article 19, or to abate public health nuisances pursuant to G.S. 160A-193, shall be the same within satellite corporate limits as within its primary corporate limits."

Sec. 2. Notwithstanding G.S. 160A-360, no approval from or agreement with Iredell County shall be required prior to the exercise of authority under G.S. 160A-360 by the Town of Mooresville in an area not to exceed one mile from the Town's satellite corporate limits.

Sec. 3. Notwithstanding the provisions of G.S. 160A-360, the City of Mount Holly and Town of Stanley may exercise the extraterritorial jurisdiction powers granted by Article 19 of Chapter 160A of the General Statutes over an area extending not more than two miles beyond their respective corporate limits.

Sec. 4. Sections 1 and 2 of this act apply only to the Town of Mooresville. Section 3 of this act applies only to the City of Mount Holly and Town of Stanley.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 861 **CHAPTER 290**

AN ACT TO PROVIDE THAT MOTOR VEHICLES SHALL STOP FOR SCHOOL BUSES EXHIBITING FLASHING RED STOPLIGHTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-217(a) reads as rewritten:

"(a) The driver of any vehicle upon approaching from any direction on the same street or highway any school bus (including privately owned buses transporting children and school buses transporting senior citizens under G.S. 115C-243), while the bus is displaying its mechanical stop ~~signal,~~ signal or flashing red stoplights, and is stopped for the purpose of receiving or discharging passengers, shall bring his vehicle to a full stop before passing or attempting to pass the bus, and shall remain stopped until the mechanical stop signal has been ~~withdrawn or until~~ withdrawn, the flashing red stoplights have been turned off, and the bus has moved on."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 967 **CHAPTER 291**

AN ACT TO PERMIT CERTAIN CONSTITUENT INSTITUTIONS OF THE UNIVERSITY OF NORTH CAROLINA TO BECOME MEMBERS OF A JOINT MUNICIPAL ASSISTANCE AGENCY AND TO PERMIT ASSOCIATE MEMBERSHIPS TO SUCH AGENCY.

The General Assembly of North Carolina enacts:

Section 1. Article 3 of Chapter 159B of the General Statutes is amended by adding a new section to read:

"*§ 159B-48. Nonmunicipal members; constituent institutions of The University of North Carolina.*

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, any constituent institution of The University of North Carolina, as defined in Article 1 of Chapter 116 of the General Statutes, that owns a system or facility for the generation, transmission, or distribution of electric power and energy for public and private use, may become a member of a joint municipal assistance agency. The Commissioner and one or more alternate Commissioners designated by any such members shall be appointed by its local governing board. As a member, the constituent institution has all the rights, privileges, immunities, powers, authority, and responsibilities of a municipal member of a joint municipal assistance agency under Article 3 of this Chapter, including, the protection and immunities granted under Article 3 to those employed, appointed or otherwise acting on behalf of the constituent institutions, and the power and authority to enter into contracts and arrangements with a joint municipal assistance agency."

Sec. 2. Article 3 of Chapter 159B of the General Statutes is amended by adding a new section to read:

"*§ 159B-49. Associate members.*

Notwithstanding the provisions of Article 1 of Chapter 159B of the General Statutes or any other provision of law, a joint municipal assistance agency may, in its bylaws, create associate memberships. An associate member of a joint municipal assistance agency shall have only those rights, privileges, immunities, powers, authority, and responsibilities as set forth in the bylaws of the joint municipal assistance agency; provided, that:

(1) An associate member shall not have the right to appoint a commissioner or alternate commissioner, have the right to vote or otherwise participate in decisions of the joint municipal assistance agency;

(2) An associate member shall not have the right to a distribution of assets upon dissolution of the joint municipal assistance agency; and

(3) Income from the joint municipal assistance agency shall not accrue to, or otherwise inure to the benefit of, an associate member."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

H.B. 991 **CHAPTER 292**

AN ACT TO PROVIDE SPECIAL RULES FOR INTERNATIONAL COMMERCIAL ARBITRATIONS.

The General Assembly of North Carolina enacts:

Section 1. Article 45 of Chapter 1 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 45B.

"International Commercial Arbitration.

"*§ 1-567.30. Preamble and short title.*

It is the policy of the State of North Carolina to promote and facilitate international trade and commerce, and to provide a forum for the resolution of disputes that may arise from participation therein. Pursuant to this policy, the purpose of this act is to encourage the use of arbitration as a means of resolving such disputes, to provide rules for the conduct of arbitration proceedings, and to assure access to the courts of this State for legal proceedings ancillary to such arbitration. This act shall be known as the North Carolina International Commercial Arbitration Act.

"*§ 1-567.31. Scope of application.*

(a) This Article applies to international commercial arbitration, subject to any applicable international agreement in force between the United States of America and any other nation or nations, or any federal statute.

(b) The provisions of this Article except G.S. 1-567.38 and G.S. 1-567.39, apply only if the place of arbitration is in this State.

(c) An arbitration is international if:

(1) The parties to the arbitration agreement have their places of business in different nations when the agreement is concluded; or

(2) One or more of the following places is situated outside the nations in which the parties have their places of business:

a. The place of arbitration if determined pursuant to the arbitration agreement;

b. Any place where a substantial part of the obligations of the commercial relationship is to be performed; or

c. The place with which the subject matter of the dispute is most closely connected; or

(3) The parties have expressly agreed that the subject matter of the arbitration agreement relates to more than one nation.

(d) For the purposes of subsection (c) of this section:

(1) If a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement;

(2) If a party does not have a place of business, reference is to be made to the party's domicile.

(e) An arbitration is deemed commercial for the purposes of this Article if it arises out of a relationship of a commercial nature, including, but not limited to the following:

(1) A transaction for the exchange of goods and services;

(2) A distribution agreement;

(3) A commercial representation or agency;

(4) An exploitation agreement or concession;

(5) A joint venture or other related form of industrial or business cooperation;

(6) The carriage of goods or passengers by air, sea, land, or road;

(7) A contract or agreement relating to construction, insurance, licensing, factoring, leasing, consulting, engineering, financing, or banking;

(8) The transfer of data or technology;

(9) The use or transfer of intellectual or industrial property, including trade secrets, trademarks, trade names, patents, copyrights, and software programs;

(10) A contract for the provision of any type of professional service, whether provided by an employee or an independent contractor.

(f) This Article shall not affect any other law in force by virtue of which certain disputes may not be submitted to arbitration or may be submitted to arbitration only according to provisions other than those of this Article.

(g) This Article shall not apply to any agreement providing explicitly that it shall not be subject to the North Carolina International Commercial Arbitration Act. This Article shall not apply to any agreement executed prior to the date of enactment of this Article.

"§ 1-567.32. *Definitions and rules of interpretation.*

(a) For the purposes of this Article:

(1) 'Arbitral award' means any decision of an arbitral tribunal on the substance of a dispute submitted to it, and includes an interlocutory, or partial award;

(2) 'Arbitral tribunal' means a sole arbitrator or a panel of arbitrators;

(3) 'Arbitration' means any arbitration whether or not administered by a permanent arbitral institution;

(4) 'Party' means a party to an arbitration agreement;

(5) 'Superior court' means the superior court of any county in this State selected pursuant to G.S. 1-567.36.

(b) Where a provision of this Article, except G.S. 1-567.58, leaves the parties free to determine a certain issue, such freedom includes the right of the parties to authorize a third party, including an institution, to make that determination.

(c) Where a provision of this Article refers to the fact that the parties have agreed or that they may agree or in any other way refers to an agreement of the parties, such agreement includes any arbitration rules referred to in that agreement.

(d) Where a provision of this Article, other than in G.S. 1-567.55(1) and G.S. 1-567.62(b)(1), refers to a claim, it also applies to a counterclaim, and where it refers to a defense, it also applies to a defense to such counterclaim.

"§ 1-567.33. *Receipt of written communications or submissions.*

(a) Unless otherwise agreed by the parties, any written communication or submission is deemed to have been received if it is delivered to the addressee personally or if it is delivered at the addressee's place of business, domicile or mailing address and the

communication or submission is deemed to have been received on the day it is so delivered. Delivery by facsimile transmission shall constitute valid receipt if the communication or submission is in fact received.

(b) If none of the places referred to in subsection (a) can be found after making reasonable inquiry, a written communication or submission is deemed to have been received if it is sent to the addressee's last known place of business, domicile or mailing address by registered mail or any other means which provide a record of the attempt to deliver it.

(c) The provisions of this Article do not apply to a written communication or submission relating to a court, administrative or special proceeding.

"*§ 1-567.34. Waiver of right to object.*

A party who knows that any provision of this Article or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating an objection to such noncompliance without undue delay or, if a time limit is provided therefor, within that period of time, shall be deemed to have waived any right to object.

"*§ 1-567.35. Extent of court intervention.*

In matters governed by this Article, no court shall intervene except where so provided in this Article or applicable federal law or any applicable international agreement in force between the United States of America and any other nation or nations.

"*§ 1-567.36. Venue and jurisdiction of courts.*

(a) The functions referred to in G.S. 1-567.41(c) and (d), 1-567.43(a), 1-567.44(b), 1-567.46(c), and 1-567.57 shall be performed by the superior court in:

(1) The county where the arbitration agreement is to be performed or was made;

(2) If the arbitration agreement does not specify a county where the agreement is to be performed and the agreement was not made in any county in the State of North Carolina, the county where any party to the court proceeding resides or has a place of business;

(3) In any case not covered by subdivisions (1) or (2) of this subsection, in any county in the State of North Carolina.

(b) All other functions assigned by this Article to the superior court shall be performed by the superior court of the county in which the place of arbitration is located.

"*§ 1-567.37. Definition and form of arbitration agreement.*

(a) An 'arbitration agreement' is an agreement by the parties to submit to arbitration all or certain disputes which have arisen or

which may arise between them in respect of a defined legal relationship, whether or not contractual. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.

(b) The arbitration agreement shall be in writing. An agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, facsimile transmission, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defense in which the existence of an agreement is alleged by one party and not denied by another. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract.

(c) Such arbitration agreement shall be valid, enforceable and irrevocable, except with the consent of all the parties, without regard to the justiciable character of the controversy.

"§ 1-567.38. Arbitration agreement and substantive claim before court.

(a) When a party to an international commercial arbitration agreement as defined in this Article commences judicial proceedings seeking relief with respect to a matter covered by the agreement to arbitrate, any other party to the agreement may apply to the superior court for an order to stay the proceedings and compel arbitration.

(b) Arbitration proceedings may begin or continue, and an award may be made, while an action described in subsection (a) is pending before the court.

"§ 1-567.39. Interim relief and the enforcement of interim measures.

(a) In the case of an arbitration where the arbitrator or arbitrators have not been appointed, or where the arbitrator or arbitrators are unavailable, a party may seek interim relief directly from the superior court as provided in subsection (c). Enforcement shall be granted as provided by the law applicable to the type of interim relief sought.

(b) In all other cases, a party shall seek interim measures under G.S. 1-567.47 from the arbitral tribunal and shall have no right to seek interim relief from the superior court, except that a party to an arbitration governed by this Article may request from the superior court enforcement of an order of an arbitral tribunal granting interim measures under G.S. 1-567.47.

(c) In connection with an agreement to arbitrate or a pending arbitration, the superior court may grant, pursuant to subsection (a) of this section:

(1) An order of attachment or garnishment;

(2) A temporary restraining order or preliminary injunction;

(3) An order for claim and delivery;

(4) The appointment of a receiver;

(5) Delivery of money or other property into court;

(6) Any other order that may be necessary to ensure the preservation or availability either of assets or of documents, the destruction or absence of which would be likely to prejudice the conduct or effectiveness of the arbitration.

(d) In considering a request for interim relief or the enforcement of interim measures, the court shall give preclusive effect to any finding of fact of the arbitral tribunal in the proceeding, including the probable validity of the claim that is the subject of the interim relief sought or the interim measures granted.

(e) Where the arbitral tribunal has not ruled on an objection to its jurisdiction, the court shall not grant preclusive effect to the tribunal's findings until the court has made an independent finding as to the jurisdiction of the arbitral tribunal. If the court rules that the arbitral tribunal did not have jurisdiction, the application for interim relief or the enforcement of interim measures shall be denied. Such a ruling by the court that the arbitral tribunal lacks jurisdiction is not binding on the arbitral tribunal or subsequent judicial proceedings.

(f) The availability of interim relief under this section may be limited by prior written agreement of the parties.

"§ *1-567.40. Number of arbitrators.*

There shall be one arbitrator unless the parties agree on a greater number of arbitrators.

"§ *1-567.41. Appointment of arbitrators.*

(a) A person of any nationality may be an arbitrator.

(b) The parties may agree on a procedure of appointing the arbitrator tribunal subject to the provisions of subsections (d) and (e) of this section.

(c) (1) If an agreement is not made under subsection (b) of this section, in an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment shall be made, upon request of a party, by the superior court.

(2) In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, a sole arbitrator shall be appointed, upon request of a party, by the superior court.

(3) In an arbitration involving more than two parties, if no agreement is reached under subsection (b) of this section,

the superior court, on request of a party, shall appoint one or more arbitrators, as provided in G.S. 1-567.40.

(d) The superior court, on request of any party, may take the necessary measures, unless the agreement on the appointment procedure provides other means for securing the appointment, if, under an appointment procedure agreed upon by the parties:

(1) A party fails to act as required under such procedure; or

(2) The parties, or two arbitrators, are unable to reach an agreement expected of them under such procedure; or

(3) A third party, including an institution, fails to perform any function entrusted to it under such procedure.

(e) A decision of the superior court on a matter entrusted by subsection (c) or (d) of this section shall be final and not subject to appeal.

(f) The superior court, in appointing an arbitrator, shall consider:

(1) Any qualifications required of the arbitrator by the agreement of the parties;

(2) Such other considerations as are likely to secure the appointment of an independent and impartial arbitrator;

(3) In the case of a sole or third arbitrator, the advisability of appointing an arbitrator of a nationality other than those of the parties.

(g) The parties may agree to employ an established arbitration institution to conduct the arbitration. If they do not so agree, the superior court may in its discretion designate an established arbitration institution to conduct the arbitration.

(h) Unless otherwise agreed, an arbitrator shall be entitled to compensation at an hourly or daily rate which reflects the size and complexity of the case, and the experience of the arbitrator. If the parties are unable to agree on such a rate, the rate shall be determined by the arbitral institution chosen pursuant to subsection (g) of this section or by the arbitral tribunal, in either case subject to the review of the superior court upon the motion of any dissenting party.

"§ *1-567.42. Grounds for challenge.*

(a) Except as otherwise provided in this Article, all persons whose names have been submitted for consideration for appointment or designation as arbitrators, or who have been appointed or designated as such, shall make a disclosure to the parties within 15 days of such submission, appointment, or designation of any information which might cause their impartiality to be questioned including, but not limited to, any of the following instances:

(1) The person has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding;

(2) The person served as a lawyer in the matter in controversy, or the person is or has been associated with another who has participated in the matter during such association, or has been a material witness concerning it;

(3) The person served as an arbitrator in another proceeding involving one or more of the parties to the proceeding;

(4) The person, individually or as a fiduciary, or such person's spouse or minor child residing in such person's household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

(5) The person, his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such a person meets any of the following conditions:

a. The person is or has been a party to the proceeding, or an officer, director, or trustee of a party;

b. The person is acting or has acted as a lawyer in the proceeding;

c. The person is known to have an interest that could be substantially affected by the outcome of the proceeding;

d. The person is likely to be a material witness in the proceeding;

(6) The person has a close personal or professional relationship with a person who meets any of the following conditions:

a. The person is or has been a party to the proceeding, or an officer, director, or trustee of a party;

b. The person is acting or has acted as a lawyer or representative in the proceeding;

c. The person is or expects to be nominated as an arbitrator or conciliator in the proceeding;

d. The person is known to have an interest that could be substantially affected by the outcome of the proceeding;

e. The person is likely to be a material witness in the proceeding.

(b) The obligation to disclose information set forth in subsection (a) of this section is mandatory and cannot be waived as to the parties with respect to persons serving either as sole arbitrator or as the chief or prevailing arbitrator. The parties may otherwise agree to waive such disclosure.

(c) From the time of appointment and throughout the arbitral proceedings, an arbitrator shall disclose to the parties without delay any circumstances referred to in subsection (a) of this section which were not previously disclosed.

(d) Unless otherwise agreed by the parties or the rules governing the arbitration, an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her independence or impartiality, or as to his or her possession of the qualifications upon which the parties have agreed.

(e) A party may challenge an arbitrator appointed by it, or in whose appointment it has participated only for reasons of which it becomes aware after the appointment has been made.

"§ *1-567.43. Challenge procedure.*

(a) The parties may agree on a procedure for challenging an arbitrator, subject to the provisions of subsection (c) of this section.

(b) If there is no agreement under subsection (a) of this section, a party challenging an arbitrator shall, within 15 days after becoming aware of the constitution of the arbitral tribunal or after becoming aware of any circumstance referred to in G.S. 1-567.42(a), send a written statement of the reasons for the challenge to the arbitral tribunal. Unless the challenged arbitrator withdraws or the other party agrees to the challenge, the arbitral tribunal shall decide on the challenge.

(c) If a challenge under any procedure agreed upon by the parties or under the procedure of subsection (b) of this section is not successful, the challenging party may, within 30 days after having received notice of the decision rejecting the challenge, request the superior court to decide on the challenge, which decision shall be final and subject to no appeal. While such a request is pending, the arbitral tribunal, including the challenged arbitrator, may continue to conduct the arbitral proceedings and make an award.

"§ *1-567.44. Failure or impossibility to act.*

(a) The mandate of an arbitrator terminates if the arbitrator becomes unable to perform the arbitrator's functions or for other reasons fails to act without undue delay or the arbitrator withdraws or the parties agree to the termination.

(b) If a controversy remains concerning any of the grounds referred to in subsection (a) of this section, a party may request the superior court to decide on the termination of the mandate. The decision of the superior court shall be final and not subject to appeal.

(c) If under this section or under G.S. 1-567.43, an arbitrator withdraws or otherwise agrees to the termination of his or her mandate, no acceptance of the validity of any ground referred to in

this section or G.S. 1-567.43(b) shall be implied in consequence of such action.

"§ 1-567.45. *Appointment of substitute arbitrator.*

(a) Where the mandate of an arbitrator terminates for any reason, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(b) Unless otherwise agreed by the parties:

(1) Where the number of arbitrators is less than three and an arbitrator is replaced, any hearings previously held shall be repeated;

(2) Where the presiding arbitrator is replaced, any hearings previously held shall be repeated;

(3) Where the number of arbitrators is three or more and an arbitrator other than the presiding arbitrator is replaced, any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(c) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section is not invalid because there has been a change in the composition of the tribunal.

"§ 1-567.46. *Competence of arbitral tribunal to rule on its jurisdiction.*

(a) The arbitral tribunal may rule on its own jurisdiction, including any objections with respect to the existence or validity of the arbitration agreement. For that purpose, an arbitration clause which forms a part of a contract shall be treated as an agreement independent of the other terms of the contract. A decision by the arbitral tribunal that the contract is null and void shall not entail **ipso jure** the invalidity of the arbitration clause, unless the arbitral tribunal finds that the arbitration clause was obtained by fraud, whether in the inducement or in the factum.

(b) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. However, a party is not precluded from raising such a plea by the fact that the party has appointed, or participated in the appointment of, an arbitrator. A plea that the arbitral tribunal is exceeding the scope of its authority shall be raised as soon as the matter alleged to be beyond the scope of its authority is raised during the arbitral proceedings. In either case, the arbitral tribunal may admit a later plea if it considers the delay justified.

(c) The arbitral tribunal may rule on a plea referred to in subsection (b) of this section either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, after having received notice of that ruling, any party may request the superior court to decide the matter.

The decision of the superior court shall be final and not subject to appeal. While such a request is pending, the arbitral tribunal may continue the arbitral proceedings and make an award.

"§ 1-567.47. *Power of arbitral tribunal to order interim measures.*

Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order any party to take such interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject matter of the dispute, including an interim measure analogous to any type of interim relief specified in G.S. 1-567.39(c). The arbitral tribunal may require any party to provide appropriate security, including security for costs as provided in G.S. 1-567.61(h)(2), in connection with such measure.

"§ 1-567.48. *Equal treatment of parties.*

The parties shall be treated with equality and each party shall be given a full opportunity to present its case.

"§ 1-567.49. *Determination of rules of procedure.*

(a) Subject to the provisions of this Article, the parties may agree on the procedure to be followed by the arbitral tribunal in conducting the proceedings.

(b) If there is no agreement under subsection (a) of this section, the arbitral tribunal may, subject to the provisions of this Article, conduct the arbitration in such manner as it considers appropriate. The power conferred upon the arbitral tribunal includes the power to order such discovery as it deems necessary and to determine the admissibility, relevance, materiality, and weight of any evidence. Evidence need not be limited by the rules of evidence applicable in judicial proceedings, except as to immunities and privilege. Each party shall have the burden of proving the facts relied on to support its claim, setoff, or defense.

"§ 1-567.50. *Place of arbitration.*

(a) The parties may agree on the place of arbitration. If the parties do not agree, the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.

(b) Notwithstanding the provisions of subsection (a) of this section, the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of goods, other property, or documents.

"§ 1-567.51. *Commencement of arbitral proceedings.*

Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute shall commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

"§ 1-567.52. Language.

(a) The parties may agree on the language or languages to be used in the arbitral proceedings. If the parties do not agree, the arbitral tribunal shall determine the language or languages to be used in the proceedings. This agreement or determination, unless otherwise specified therein, shall apply to any written statement by a party, any hearing and any award, decision, or other communication by the arbitral tribunal.

(b) The arbitral tribunal may order that any documentary evidence shall be accompanied by a translation into the language or languages agreed upon by the parties or determined by the arbitral tribunal.

(c) The arbitral tribunal may employ one or more translators at the expense of the parties.

"§ 1-567.53. Statements of claim and defense.

(a) Within the period of time agreed by the parties or determined by the arbitral tribunal, the claimant shall state the facts supporting its claim, the points at issue and the relief or remedy sought, and the respondent shall state its defenses and counterclaims or setoffs in respect of these particulars, unless the parties have otherwise agreed as to the required elements of such statements. The parties may submit with their statements all documents they consider to be relevant or may add a reference to the documents or other evidence the party will submit.

(b) Unless otherwise agreed by the parties, either party may amend or supplement a claim or defense during the course of the arbitral proceedings, unless the arbitral tribunal considers it inappropriate to allow such amendment having regard to the delay in making it.

(c) If there are more than two parties to the arbitration, each party shall state its claims, setoffs, and defenses as provided in subsection (a) of this section.

"§ 1-567.54. Hearings and written proceedings.

(a) Unless otherwise agreed by the parties, the arbitral tribunal shall decide whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the proceedings shall be conducted on the basis of documents and other materials. Unless the parties have agreed that no hearings shall be held, the arbitral tribunal shall hold such hearings at an appropriate stage of the proceedings, if so requested by a party.

(b) The parties shall be given sufficient advance notice of any hearing and of any meeting of the arbitral tribunal for the purposes of inspection of goods, other property, or documents.

(c) All statements, documents, or other information supplied to the arbitral tribunal by one party shall be served on the other party and any expert report or evidentiary document on which the arbitral

tribunal may rely in making its decision shall be served on the parties. The arbitral tribunal shall direct the timing of such service to protect the parties from undue surprise.

(d) Unless otherwise agreed by the parties, all oral hearings and meetings in arbitral proceedings shall be held *in camera*. Confidential information disclosed during the proceedings by the parties or by witnesses shall not be divulged by the arbitrator or arbitrators. Unless otherwise agreed by the parties, or required by applicable law, the arbitral tribunal and the parties shall keep confidential all matters relating to the arbitration and the award.

(e) The parties may agree on:

(1) The attendance of a court reporter,

(2) The creation of a transcript of proceedings, or

(3) The making of an audio or video record of proceedings, at the expense of the parties.

Any party may provide for any of the actions specified in subdivisions (1) through (3) of this subsection at that party's own expense.

(f) After asking the parties if they have any further testimony or evidentiary submissions and upon receiving negative replies or being satisfied that the record is complete, the arbitral tribunal may declare the hearings closed. The arbitral tribunal may reopen the hearings, upon terms it considers just, at any time before the award is made.

"§ *1-567.55. Default of a party.*

Unless otherwise agreed by the parties, where, without showing sufficient cause:

(1) The claimant fails to submit a statement of claim in accordance with G.S. 1-567.53(a), the arbitral tribunal shall terminate the proceedings;

(2) The respondent fails to submit a statement of defense in accordance with G.S. 1-567.53(c), the arbitral tribunal shall continue to conduct the proceedings without treating such failure in itself as an admission of the claimant's allegations;

(3) Any party fails to appear at a hearing or to produce documentary evidence as directed by the arbitral tribunal, the arbitral tribunal may continue to conduct the proceedings and make the award on the evidence before it.

"§ *1-567.56. Expert appointed by arbitral tribunal.*

(a) Unless otherwise agreed by the parties, the arbitral tribunal:

(1) May appoint one or more experts to report to it on specific issues to be determined by the arbitral tribunal;

(2) May require a party to give the expert any relevant information or to produce, or to provide access to, any

relevant documents, goods, or other property for the expert's inspection.

(b) Unless otherwise agreed by the parties, if a party so requests or if the arbitral tribunal considers it necessary, the expert shall, after delivery of his written or oral report, participate in an oral hearing where the parties have the opportunity to question the expert and to present expert witnesses on the points at issue.

"§ *1-567.57. Court assistance in obtaining discovery and taking evidence.*

(a) The arbitral tribunal or a party with the approval of the arbitral tribunal may request from the superior court assistance in obtaining discovery and taking evidence. The court may execute the request within its competence and according to its rules on discovery and taking evidence, and may impose sanctions for failure to comply with its orders. A subpoena may be issued as provided by G.S. 8-59, in which case the witness compensation provisions of G.S. 6-51, 6-53, and 7A-314 shall apply.

(b) If the parties to two or more arbitration agreements agree, in their respective arbitration agreements or otherwise, to consolidate the arbitrations arising out of those agreements, the superior court, on application by one party with the consent of all the other parties to those arbitration agreements, may:

(1) Order the arbitrations to be consolidated on terms the court considers just and necessary;

(2) If all the parties cannot agree on an arbitral tribunal for the consolidated arbitration, appoint an arbitral tribunal as provided by G.S. 1-567.41; and

(3) If all the parties cannot agree on any other matter necessary to conduct the consolidated arbitration, make any other order it considers necessary.

"§ *1-567.58. Rules applicable to substance of dispute.*

(a) The arbitral tribunal shall decide the dispute in accordance with such rules of law as are chosen by the parties as applicable to the substance of the dispute. Any designation of the law or legal system of a given country or political subdivision thereof shall be construed, unless otherwise expressed, as directly referring to the substantive law of that country or political subdivision and not to its conflict of laws rules.

(b) Failing any designation by the parties, the arbitral tribunal shall apply the law determined by the conflict of laws rules which it considers applicable.

(c) The arbitral tribunal shall decide *ex aequo et bono* (on the basis of fundamental fairness), or as *amiable compositeur* (as an 'amicable

pompounder'), only if the parties have expressly authorized it to do so.

(d) In all cases, the arbitral tribunal shall decide in accordance with the terms of the contract and shall take into account the usages of the trade applicable to the transaction.

"§ *1-567.59. Decision making by panel of arbitrators.*

Unless otherwise agreed by the parties, in arbitral proceedings with more than one arbitrator, any decision of the arbitral tribunal shall be made by a majority of all its members. However, questions of procedure may be decided by a presiding arbitrator, if authorized by the parties or all members of the arbitral tribunal.

"§ *1-567.60. Settlement.*

(a) An arbitral tribunal may encourage settlement of the dispute and, with the agreement of the parties, may use mediation, conciliation, or other procedures at any time during the arbitral proceedings to encourage settlement.

(b) If, during arbitral proceedings, the parties settle the dispute, the arbitral tribunal shall terminate the proceedings and, if requested by the parties and not objected to by the arbitral tribunal, record the settlement in the form of an arbitral award on agreed terms.

(c) An award on agreed terms shall be made in accordance with the provisions of G.S. 1-567.61 and shall state that it is an arbitral award. Such an award shall have the same status and effect as any other award on the substance of the dispute.

"§ *1-567.61. Form and contents of award.*

(a) The award shall be made in writing and shall be signed by the arbitrator or arbitrators. In arbitral proceedings with more than one arbitrator, the signatures of the majority of all members of the arbitral tribunal shall suffice, provided that the reason for any omitted signature is stated.

(b) The award shall not state the reasons upon which it is based, unless the parties have agreed that reasons are to be given.

(c) The award shall state its date and the place of arbitration as determined in accordance with G.S. 1-567.50. The award shall be considered to have been made at that place.

(d) After the award is made, a copy signed by the arbitrator or arbitrators in accordance with subsection (a) of this section shall be delivered to each party.

(e) The award may be denominated in foreign currency, by agreement of the parties or in the discretion of the arbitral tribunal if the parties are unable to agree.

(f) Unless otherwise agreed by the parties, the arbitral tribunal may award interest.

(g) The arbitral tribunal may award specific performance in its discretion to a party requesting an award of specific performance.

(h) (1) Unless otherwise agreed by the parties, the awarding of costs of an arbitration shall be at the discretion of the arbitral tribunal.

(2) In making an order for costs, the arbitral tribunal may include as costs:

a. The fees and expenses of the arbitrator or arbitrators, expert witnesses, and translators;

b. Fees and expenses of counsel and of the institution supervising the arbitration, if any; and

c. Any other expenses incurred in connection with the arbitral proceedings.

(3) In making an order for costs, the arbitral tribunal may specify:

a. The party entitled to costs;

b. The party who shall pay the costs;

c. The amount of costs or method of determining that amount; and

d. The manner in which the costs shall be paid.

"§ *1-567.62. Termination of proceedings.*

(a) The arbitral proceedings are terminated by the final award or by an order of the arbitral tribunal in accordance with subsection (b) of this section.

(b) The arbitral tribunal shall issue an order for the termination of the arbitral proceedings if:

(1) The claimant withdraws the claim, unless the respondent objects to the order and the arbitral tribunal recognizes a legitimate interest on the respondent's part in obtaining a final settlement of the dispute;

(2) The parties agree on the termination of the proceedings; or

(3) The arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

(c) Subject to the provisions of G.S. 1-567.63, the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings.

"§ *1-567.63. Correction and interpretation of awards; additional awards.*

(a) Within 30 days of receipt of the award, unless another period of time has been agreed upon by the parties:

(1) A party may request the arbitral tribunal to correct in the award any computation, clerical or typographical errors or other errors of a similar nature;

(2) A party may request the arbitral tribunal to give an interpretation of a specific point or part of the award.

If the arbitral tribunal considers such request to be justified, it shall make the correction or give the interpretation within 30 days of receipt of the request. Such correction or interpretation shall become part of the award.

(b) The arbitral tribunal may correct any error of the type referred to in subsection (a) on its own initiative within 30 days of the date of the award.

(c) Unless otherwise agreed by the parties, within 30 days of receipt of the award, a party may request the arbitral tribunal to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days after the date of receipt of the request.

(d) The arbitral tribunal may extend, if necessary, the period within which it shall make a correction, interpretation, or an additional award under subsection (a) or (c).

(e) The provisions of G.S. 1-567.61 shall apply to a correction or interpretation of the award or to an additional award made under this section.

"*§ 1-567.64. Modifying or vacating of awards.*

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, an arbitral award may be vacated by a court only upon a showing that the award is tainted by illegality, or substantial unfairness in the conduct of the arbitral proceedings. In determining whether an award is so tainted, the superior court shall have regard to the provisions of this Article, and of G.S. 1-567.13 and G.S. 1-567.14, but shall not engage in *de novo* review of the subject matter of the dispute giving rise to the arbitration proceedings.

"*§ 1-567.65. Confirmation and enforcement of awards.*

Subject to the relevant provisions of federal law or any applicable international agreement in force between the United States of America and any other nation or nations, upon application of a party, the superior court shall confirm an arbitral award, unless it finds grounds for modifying or vacating the award under G.S. 1-567.64. An award shall not be confirmed unless the time for correction and interpretation of awards prescribed by G.S. 1-567.63 shall have expired or been waived by all the parties. Upon the granting of an order confirming, modifying, or correcting an award, judgment or

decree shall be entered in conformity therewith and enforced as any other judgment or decree. The superior court may award costs of the application and of the subsequent proceedings.

"§ *1-567.66. Applications to superior court.*

Except as otherwise provided, an application to the superior court under this Article shall be by motion and shall be heard in the manner and upon the notice provided by law or rule of court for the making and hearing of motions. Unless the parties have agreed otherwise, notice of an initial application for an order shall be served in the manner provided by law for the service of a summons in an action.

"§ *1-567.67. Appeals.*

(a) An appeal may be taken from:

(1) An order denying an application to compel arbitration made under G.S. 1-567.38;

(2) An order granting an application to stay arbitration made under G.S. 1-567.38;

(3) An order confirming or denying confirmation of an award;

(4) An order modifying or correcting an award;

(5) An order vacating an award without directing a rehearing; or

(6) A judgment or decree entered pursuant to the provisions of this Article.

(b) The appeal shall be taken in the manner and to the same extent as from orders or judgments in a civil action.

"§ *1-567.68. Severability.*

In the event any provision of this act is held to be invalid, the court's holding as to that provision shall not affect the validity or operation of other provisions of the act; and to that end the provisions of this act are severable."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 13th day of June, 1991.

S.B. 139 **CHAPTER 293**

AN ACT TO ALLOW BESSEMER CITY TO REDISTRICT ITS RESIDENCY WARDS TO THE EXTENT PERMISSIBLE BY FEDERAL CONSTITUTIONAL AND STATUTORY PROVISIONS, SO AS TO ALLOW MAXIMIZATION OF MINORITY VOTING STRENGTH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-101(6) reads as rewritten:

"(6) Mode of election of the council:

a. All candidates shall be nominated and elected by all the qualified voters of the city.

b. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; the qualified voters of each district shall nominate and elect candidates who reside in the district for seats apportioned to that district; and all the qualified voters of the city shall nominate and elect candidates apportioned to the city at large, if any.

c. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons ~~as nearly as possible~~ to no less an extent than required by the Constitution of the United States and any applicable federal law, except for members apportioned to the city at large; and candidates shall reside in and represent the districts according to the apportionment plan adopted, but all candidates shall be nominated and elected by all the qualified voters of the city.

d. The city shall be divided into electoral districts equal in number to one half the number of council seats; the council seats shall be divided equally into 'ward seats' and 'at-large seats,' one each of which shall be apportioned to each district, so that each council member represents the same number of persons as nearly as possible; the qualified voters of each district shall nominate and elect candidates to the 'ward seats'; candidates for the 'at-large seats' shall reside in and represent the districts according to the apportionment plan adopted, but all candidates for 'at-large' seats shall be nominated and elected by all the qualified voters of the city.

e. The city shall be divided into single-member electoral districts; council members shall be apportioned to the districts so that each member represents the same number of persons as nearly as possible, except for members apportioned to the city at large, if any; in a nonpartisan primary, the qualified voters of each district

shall nominate two candidates who reside in the district, and the qualified voters of the entire city shall nominate two candidates for each seat apportioned to the city at large, if any; and all candidates shall be elected by all the qualified voters of the city.

If either of options b, c, d or e is adopted, the council shall divide the city into the requisite number of single-member electoral districts according to the apportionment plan adopted, and shall cause a map of the districts so laid out to be drawn up and filed as provided by G.S. 160A-22 and 160A-23. No more than one half of the council may be apportioned to the city at large. An initiative petition may specify the number of single-member electoral districts to be laid out, but the drawing of district boundaries and apportionment of members to the districts shall be done in all cases by the council."

Sec. 2. This act applies to the City of Bessemer City only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

S.B. 241 **CHAPTER 294**

AN ACT TO ALLOW NORTH CAROLINA AMATEUR SPORTS TO USE STATE TRUCKS AND VANS FOR THE STATE GAMES OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. (a) Notwithstanding G.S. 14-247 and G.S. 143-341(8)i., the Department of Administration may allow North Carolina Amateur Sports to have the use of State trucks and vans for the 1991-92 State Games of North Carolina according to the following schedule:

June 12, 1991 - June 29, 1991 - one cargo van, one passenger van, and one blazer;

June 12, 1991 - July 5, 1991 - four cargo vans;

June 30, 1991 - one passenger van.

The Department of Administration need not make any charge for use of vehicles under this act.

(b) The State of North Carolina shall incur no liability for any damages resulting from use of vehicles under this act and North Carolina Amateur Sports shall carry liability insurance of not less than $1,000,000 covering each vehicle while in its use.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

S.B. 475 **CHAPTER 295**

AN ACT TO REQUIRE THE WILDLIFE RESOURCES COMMISSION TO MODIFY THE BOUNDARIES OF A PORTION OF THE DANIEL BOONE BEAR SANCTUARY LOCATED IN CALDWELL AND AVERY COUNTIES, AND TO ALLOW THE HUNTING OF BEAR AND WILD BOAR FROM THE RIGHTS-OF-WAY OF UNPAVED ROADS IN AVERY, CALDWELL, AND WILKES COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. The Wildlife Resources Commission, in cooperation with the U.S. Forest Service, shall modify the boundaries of that portion of the Daniel Boone Bear Sanctuary located in Caldwell and Avery Counties as follows:

(1) That portion of the Daniel Boone Bear Sanctuary located east of U.S. Forest Service Road 45 in Caldwell County shall no longer be included in the bear sanctuary.

(2) That portion of the Pisgah Game Land in Caldwell and Avery Counties which is not currently part of the Daniel Boone Bear Sanctuary, but which is located south of the northeastern portion of the bear sanctuary and is bisected by State Road 1530, shall be included within the bear sanctuary.

Sec. 2. The provisions of Chapter 150 of the 1973 Session Laws, as amended by Chapter 220 of the 1979 Session Laws, Chapter 39 of the 1987 Session Laws, and any other law making it unlawful to hunt, take, or kill, do not apply to the hunting, taking, or killing of bear or wild boar from the right-of-way of any unpaved road in Avery, Caldwell, or Wilkes County.

Sec. 3. Section 1 of this act becomes effective October 1, 1991, and expires October 1, 1993. Section 2 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 248 **CHAPTER 296**

AN ACT TO AUTHORIZE THE TOWN OF MOORESVILLE TO LEVY A ROOM OCCUPANCY TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy tax. (a) Authorization and scope. The Mooresville Town Board of Commissioners may by resolution, after not less than 10 days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of up to two percent (2%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the town that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.

(c) Administration. The town shall administer a tax levied under this section. A tax levied under this section is due and payable to the town finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the town. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the town finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of

the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Disposition of tax proceeds. The Town of Mooresville shall set aside in a special account fifty percent (50%) of the net proceeds of the occupancy tax and shall spend these funds to promote travel and tourism. The Town of Mooresville shall remit the remaining proceeds of the tax to its general fund and may use these funds for any lawful purpose. As used in this subsection, "net proceeds" means gross proceeds less the cost to the town of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Mooresville Town Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Travel and Tourism Authority. (a) Appointment and membership. After the Town of Mooresville adopts a resolution levying an occupancy tax under this act, it shall also adopt a resolution creating a Travel and Tourism Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The membership of the Authority shall consist of: two members representing the Mooresville-South Iredell Chamber of Commerce; two members representing the motel or travel and tourism industry; and one member of the Mooresville Town Board. The resolution shall provide for terms of office, and for the filling of vacancies on the Authority. The Mooresville Town Board shall designate one member

of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority. Members shall serve at the pleasure of the Mooresville Town Board.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for the Town of Mooresville shall be the ex officio finance officer of the Authority.

(b) Duties. The Authority shall promote travel, tourism, and conventions in the Greater Mooresville area; sponsor tourism related events and activities; and finance tourism related capital projects in the Greater Mooresville area with the fifty percent (50%) of the net proceeds set aside by the Town of Mooresville, all disbursements from which shall be subject to approval by the Mooresville Town Board.

(c) Reports. The Authority shall report at the close of the fiscal year to the Mooresville Town Board, or more often if required by said Board, on its receipts and expenditures for the preceding year in such detail as the Board may require.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 391 **CHAPTER 297**

AN ACT TO CONFORM THE PETITION REQUIREMENTS FOR UNAFFILIATED CANDIDATES TO A RECENT COURT RULING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-122(a) reads as rewritten:

"(a) Procedure for Having Name Printed on Ballot as Unaffiliated Candidate. -- Any qualified voter who seeks to have his name printed on the general election ballot as an unaffiliated candidate shall:

(1) If the office is a statewide office, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the State equal in number to two percent (2%) of the total number of registered voters in the State as reflected by the most recent statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and place

a check mark on the petition by the name of each signer who is qualified and registered to vote in his county and shall attach to the petition his signed certificate. Said certificates shall state that the signatures on the petition have been checked against the registration records and shall indicate the number of signers to be qualified and registered to vote in his county. The chairman shall return each petition, together with the certificate required in this section, to the person who presented it to him for checking. Verification by the chairman of the county board of elections shall be completed within two weeks from the date such petitions are presented and a fee of five cents (5¢) for each name appearing on the petition has been received.

(2) If the office is a district office comprised of two or more counties, file written petitions with the State Board of Elections supporting his candidacy for a specified office. These petitions must be filed with the State Board of Elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the ~~State~~ district equal in number to ~~five percent (5%)~~ four percent (4%) of the total number of registered voters in the district as reflected by the latest statistical report issued by the State Board of Elections. Each petition shall be presented to the chairman of the board of elections of the county in which the signatures were obtained. The chairman shall examine the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(3) If the office is a county office or a single county legislative district, file written petitions with the chairman or supervisor of the county board of elections supporting his candidacy for a specified county office. These petitions must be filed with the county board of elections on or before 12:00 noon on the last Friday in June preceding the general election and must be signed by qualified voters of the county equal in number to ~~ten percent (10%)~~ four percent (4%) of the total number of registered voters in the county as reflected by the most recent statistical report issued by the State Board of Elections, except if the office is for a district consisting of less than the entire county and only the voters in that district vote for that office, the petitions must be signed by qualified voters of the district equal in number to four percent (4%) of the total number of voters in the district according to the most recent figures certified by the State Board of Elections.

Each petition shall be presented to the chairman or supervisor of the county board of elections. The chairman shall examine, or cause to be examined, the names on the petition and the procedure for certification shall be the same as specified in (1) above.

(4) If the office is a partisan municipal office, file written petitions with the chairman or supervisor of the county board of elections in the county wherein the municipality is located supporting his candidacy for a specified municipal office. These petitions must be filed with the county board of elections on or before the time and date specified in G.S. 163-296 and must be signed by the number of qualified voters specified in G.S. 163-296. The procedure for certification shall be the same as specified in (1) above.

Upon compliance with the provisions of (1), (2), (3), or (4) of this subsection, the board of elections with which the petitions and affidavit have been timely filed shall cause the unaffiliated candidate's name to be printed on the general election ballots in accordance with G.S. ~~163-14C~~ 163-140.

An individual whose name appeared on the ballot in a primary election preliminary to the general election shall not be eligible to have his name placed on the general election ballot as an unaffiliated candidate for the same office in that year."

Sec. 2. G.S. 163-296 reads as rewritten:

"§ *163-296. Nomination by petition.*

In cities conducting partisan elections, any qualified voter who seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate may do so in the manner provided in G.S. 163-122, except that the petitions and affidavits shall be filed not later than 12:00 noon on the Friday preceding the seventh Saturday before the election, and the petitions shall be signed by a number of qualified voters of the municipality equal to at least ~~ten percent (10%)~~ four percent (4%) of the whole number of voters qualified to vote in the municipal election according to the most recent figures certified by the State Board of Elections. A person whose name appeared on the ballot in a primary election is not eligible to have his name placed on the regular municipal election ballot as an unaffiliated candidate for the same office in that year. The Board of Elections shall examine and verify the signatures on the petition, and shall certify only the names of signers who are found to be qualified registered voters in the municipality. Provided that in the case where a qualified voter seeks to have his name printed on the regular municipal election ballot as an unaffiliated candidate for election from an election district within the municipality, the petition shall be signed by ~~ten percent (10%)~~ four

percent (4%) of the voters qualified to vote ~~in that district.~~ for that office."

Sec. 3. This act becomes effective with respect to elections held on or after July 1, 1991.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 456 **CHAPTER 298**

AN ACT TO AMEND THE WAGE AND HOUR ACT TO PROVIDE FOR ATTORNEYS' FEES AND LIQUIDATED DAMAGES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.22 reads as rewritten:

"§ *95-25.22. Recovery of unpaid wages.*

(a) Any employer who violates the provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), or G.S. 95-25.6 through 95-25.12 (Wage Payment) shall be liable to the employee or employees affected in the amount of their unpaid minimum wages, their unpaid overtime compensation, or their unpaid amounts due under G.S. 95-25.6 through 95-25.12, as the case may be, plus interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due.

~~In its discretion, the court may award exemplary damages in an amount not in excess of the amount found to be due as provided above.~~

(a1) In addition to the amounts awarded pursuant to subsection (a) of this section, the court shall award liquidated damages in an amount equal to the amount found to be due as provided in subsection (a) of this section, provided that if the employer shows to the satisfaction of the court that the act or omission constituting the violation was in good faith and that the employer had reasonable grounds for believing that the act or omission was not a violation of this Article, the court may, in its discretion, award no liquidated damages or may award any amount of liquidated damages not exceeding the amount found due as provided in subsection (a) of this section.

(b) Action to recover such liability may be maintained in the General Court of Justice by any one or more employees.

(c) Action to recover such liability may also be maintained in the General Court of Justice by the Commissioner at the request of the employees affected. Any sums thus recovered by the Commissioner on behalf of an employee shall be held in a special deposit account and shall be paid directly to the employee or employees affected.

(d) The court, in any action brought under this ~~section~~ Article may, in addition to any judgment awarded plaintiff, order costs and fees of the action and reasonable attorneys' fees to be paid by the defendant. In an action brought by the Commissioner in which a default judgment is entered, the clerk shall order attorneys' fees of three hundred dollars ($300.00) to be paid by the defendant.

The court may order costs and fees of the action and reasonable attorneys' fees to be paid by the plaintiff if the court determines that the action was frivolous.

(e) The Commissioner is authorized to determine and supervise the payment of the amounts due under this section, including interest at the legal rate set forth in G.S. 24-1, from the date each amount first came due, and the agreement to accept such amounts by the employee shall constitute a waiver of the employee's right to bring an action under subsection (b) of this section.

(f) Actions under this section must be brought within two years pursuant to G.S. 1-53.

(g) Prior to initiating any action under this section, the Commissioner shall exhaust all administrative remedies, including giving the employer the opportunity to be heard on the matters at issue and giving the employer notice of the pending action."

Sec. 2. This act is effective upon ratification and applies to actions brought on or after that date.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 499 **CHAPTER 299**

AN ACT TO ESTABLISH THE MISSION AND ESSENTIAL SERVICES OF THE PUBLIC HEALTH SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 130A of the General Statutes is amended by adding the following new section to read:

"*§ 130A-1.1. Mission and essential services.*

(a) The General Assembly recognizes that unified purpose and direction of the public health system is necessary to assure that all citizens in the State have equal access to essential public health services. The General Assembly declares that the mission of the public health system is to promote and contribute to the highest level of health possible for the people of North Carolina by:

(1) Preventing health risks and disease;

(2) Identifying and reducing health risks in the community;

(3) Detecting, investigating, and preventing the spread of disease;
(4) Promoting healthy lifestyles;
(5) Promoting a safe and healthful environment;
(6) Promoting the availability and accessibility of quality health care services through the private sector; and
(7) Providing quality health care services when not otherwise available.

(b) As used in this section, the term 'essential public health services' means those services that the State shall assure because they are essential to promoting and contributing to the highest level of health possible for the citizens of North Carolina. The Department of Environment, Health, and Natural Resources shall attempt to assure within the resources available to it that the following essential public health services are available and accessible to all citizens of the State, and shall account for the financing of these services:

(1) Health Support:
  a. Assessment of health status, health needs, and environmental risks to health;
  b. Patient and community education;
  c. Public health laboratory;
  d. Registration of vital events;
(2) Environmental Health:
  a. Lodging and institutional sanitation;
  b. On-site domestic sewage disposal;
  c. Water and food safety and sanitation; and
(3) Personal Health:
  a. Child health;
  b. Chronic disease control;
  c. Communicable disease control;
  d. Dental public health;
  e. Family planning;
  f. Health promotion and risk reduction;
  g. Maternal health.

The Commission for Health Services shall determine specific services to be provided under each of the essential public health services categories listed above.

(c) The General Assembly recognizes that there are health-related services currently provided by State and local government and the private sector that are important to maintaining a healthy social and ecological environment but that are not included on the list of essential public health services required under this section. Omission of these services from the list of essential public health services shall not be construed as an intent to prohibit or decrease their availability.

Rather, such omission means only that the omitted services may be more appropriately assured by government agencies or private entities other than the public health system.

(d) The list of essential public health services required by this section shall not be construed to limit or restrict the powers and duties of the Commission for Health Services or the Department of Environment, Health, and Natural Resources as otherwise conferred by State law."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 506 **CHAPTER 300**

AN ACT TO CLARIFY THE LAW PROVIDING FOR THE PREVENTION OF LEAD POISONING IN CHILDREN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-131.5 reads as rewritten:

"§ *130A-131.5. Commission to adopt rules.*

(a) For the protection of the public health, the Commission shall adopt rules for the prevention and control of lead poisoning in children. The rules shall include provisions for:

(1) Reporting by laboratories of elevated blood lead levels in children less than six years of age; the rules shall specify the public health agency to which reports shall be made, and shall establish when a blood lead level is considered to be elevated. The rules shall further provide the specific information to be included in the reports, the time limits for reporting, and the form in which reports shall be submitted;

(2) Investigation by the Department to determine the source of elevated blood lead levels;

(3) Identification of lead poisoning hazards;

(4) Examination and testing of children less than six years of age who are reasonably suspected of having elevated blood lead levels; and

(5) Abatement of lead poisoning hazards in dwellings, schools and day care facilities ~~in which children less than six years of age live or attend school or day care.~~ determined by the Department to be a potential source of an elevated blood lead level in a child less than six years of age.

(b) Abatement orders issued by the Department pursuant to this section shall require elimination of the lead poisoning hazard. Removal of children from the dwelling, school, or day care facility

shall not constitute abatement if the property continues to be used for a dwelling, school, or day care facility."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 534 **CHAPTER 301**

AN ACT TO REMOVE THE SUNSET ON THE VICTIMS COMPENSATION ACT.

The General Assembly of North Carolina enacts:

Section 1. Section 6 of Chapter 832 of the 1983 Session Laws reads as rewritten:

"Sec. 6. This act shall become effective when funds are appropriated by the General Assembly to the Department of Crime Control and Public Safety to implement the provisions of this act. No claims may be filed under this act for criminally injurious conduct occurring before the effective date of this ~~act~~ act. ~~or after December 31, 1991. Moneys remaining after payment of claims under this Chapter shall revert to the General Fund on July 1, 1993. This act is repealed effective July 1, 1993.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 610 **CHAPTER 302**

AN ACT TO PROVIDE RESIDENCY DISTRICTS FOR ELECTION OF THE MARTIN COUNTY BOARD OF COMMISSIONERS, TO IMPLEMENT A CONSENT ORDER IN THE CASE OF DANIELS V. BOARD OF COMMISSIONERS OF MARTIN COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The Board of Commissioners of Martin County shall consist of five members, to be elected at-large by the entire electorate of the county, under a system of limited voting, as follows:

(1) There shall be two residency districts created within the county as follows:

a. The WESTERN DISTRICT shall consist of the townships of Poplar Point, Goose Nest, Hamilton, Robersonville and Cross Roads;

b. The EASTERN DISTRICT shall consist of the townships of Williamston, Beargrass, Jamesville, Williams and Griffins;

(2) Two of the five commissioners shall reside in the WESTERN DISTRICT. They shall be elected simultaneously, and each voter in the county shall be permitted to cast one vote in the primary, and one vote in the general election, for these two commission seats;

(3) Three of the five commissioners shall reside in the EASTERN DISTRICT. They shall be elected simultaneously, and each voter in the county shall be permitted to cast two votes in the primary, and two votes in the general election, for these three commission seats.

(4) The candidates receiving the highest number of votes shall be declared the winners of the primary, and of the general elections, respectively. No run-off elections shall be held.

Sec. 2. Elections shall remain partisan, and terms of office shall continue to be four years, except as set forth in this act.

Sec. 3. This new system of election shall be implemented as follows:

(1) A regular election was scheduled for election of two members of the Board of Commissioners of Martin County for November 6, 1990. The primary election for those seats was already held in April of 1990. In light of the pending lawsuit and the desire of the parties to settle this matter, this election was held under the old system of election, except that the persons elected to office were elected to a two-year term, instead of a four-year term of office;

(2) All five seats on the Board of Commissioners of Martin County shall come up for election in 1992. Both the primary and general elections shall be held under the system of limited voting set out above, with each voter casting one vote for the commissioners in the WESTERN DISTRICT of the county, and casting two votes for the commissioners in the EASTERN DISTRICT of the county. The two commissioners elected to the WESTERN DISTRICT shall serve a two-year term; these two seats will therefore be up for election again in 1994, and every four years thereafter. The three commissioners elected to the EASTERN DISTRICT shall serve a four-year term, and shall be up for election again in 1996, and every four years thereafter.

(3) Except as they may conflict with the provisions of this act, the laws of the State of North Carolina shall continue to govern elections for the Board of Commissioners of Martin

County and the laws of the State shall continue to govern and prescribe the powers and duties of the Board of Commissioners.

Sec. 4. Chapter 741 of the 1955 Session Laws, Chapter 36 of the Public-Local Laws of 1937, Chapter 400 of the Public-Local Laws of 1935 and Chapter 291 of the 1907 Public Laws are hereby repealed.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 668 **CHAPTER 303**

AN ACT TO AMEND THE CHARTER OF THE CITY OF SOUTHPORT TO PROVIDE FOR THE PLACEMENT OF THE POSITION OF TAX COLLECTOR UNDER THE SUPERVISION OF THE CITY MANAGER.

The General Assembly of North Carolina enacts:

Section 1. Section 4.2 of the Charter of the City of Southport, being Chapter 659 of the Session Laws of 1983, reads as rewritten:

"Sec. 4.2. *City Manager.* The Board of Aldermen shall appoint a City Manager who shall be the administrative head of the City government and shall be responsible for the administration of all departments of the City government. He shall be appointed with regard to merit only, and he need not be a resident of the City when appointed. He shall hold office during the pleasure of the Board and shall receive such compensation as it shall fix by ordinance.

The City Manager so appointed shall (1) be the administrative head of the City government, and direct and supervise the administration of all departments, offices and agencies of the City; (2) see that within the City the laws of the State and the ordinances, resolutions, and regulations of the Board are faithfully executed; (3) attend all meetings of the Board and recommend for adoption such measures as he shall deem expedient; (4) make reports to the Board from time to time upon affairs of the City, keep the Board fully advised of the City's financial condition and its future financial needs; (5) appoint, suspend and remove all heads of departments and other employees of the City, except the City Attorney, ~~the City Tax Collector~~ and the Clerk, who shall be appointed by the Board; (6) perform any other duties that may be required and authorized by the Board; and (7) prepare and submit the annual budget and capital program to the Board."

Sec. 2. Section 4.6 of the Charter of the City of Southport, being Chapter 659 of the Session Laws of 1983, reads as rewritten:

"Sec. 4.6. *City Tax Collector.* The ~~Board~~ City Manager shall appoint a City Tax Collector to collect all taxes, licenses, fees and other revenues accruing to the City, subject to the General Statutes, the provisions of this Charter and the ordinances of the City. The City Tax Collector shall diligently comply with and enforce all the laws of North Carolina relating to the collection of taxes and other revenues."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 690 **CHAPTER 304**

AN ACT TO AMEND THE LAW RELATING TO THE ASSIGNMENT OF COUNSEL FOR INDIGENT PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-459 reads as rewritten:

"§ *7A-459. Implementing regulations by State Bar Council.*

~~In counties which do not have a public defender, the~~ The North Carolina State Bar Council shall make rules and regulations consistent with this Article relating to the manner and method of assigning counsel, the procedure for the determination of indigency, the waiver of counsel, the adoption and approval of plans by any district bar as defined in G.S. 84-19 regarding the method of assignment of counsel among the licensed attorneys of the district bar district, and such other matters as shall provide for the protection of the constitutional rights of all indigent persons and the reasonable allocation of responsibility for the representation of indigent persons among the licensed attorneys of this State. ~~Such~~ These rules and regulations shall apply in every county and shall not become effective until certified to and approved by the Supreme Court of North Carolina."

Sec. 2. G.S. 7A-467 reads as rewritten:

"§ *7A-467. Assistant defenders; assigned counsel.*

(a) Each public defender is entitled to such assistant public defenders and investigators, full-time or part-time, as may be authorized by the Administrative Office of the Courts. Assistants and investigators are appointed by the public defender and serve at his pleasure. Compensation of assistants shall be as provided in the biennial Current Operations Appropriations Act. The Administrative Officer of the Courts shall fix the compensation of each investigator. Assistants and investigators shall perform such duties as may be assigned by the public defender.

(b) A member of the district bar of any judicial district as defined in G.S. 84-19, all or part of which includes or is included in a defender

district, who resides or regularly practices in that district and who consents to such service may be assigned by the public defender to represent an indigent person. In addition, if a conflict of interests prohibits the public defender from representing an indigent person, or in unusual circumstances when, in the opinion of the court the proper administration of justice requires it, the court may assign ~~any~~ a member of the district bar to represent an indigent person. All assignments made under this subsection shall be governed by the rules and regulations made by the North Carolina State Bar Council pursuant to G.S. 7A-459. Any attorney assigned under this subsection is entitled to the services of the defender's office to the same extent as counsel assigned by the public defender.

(c) In assigning assistant defenders and members of the bar generally the defender shall consider the nature of the case and the skill of counsel, to the end that all indigent persons are adequately represented. Any attorney assigned shall have the minimum experience and qualifications required by the rules and regulations made by the North Carolina State Bar Council pursuant to G.S. 7A-459. Members of the bar assigned by the defender or by the court are compensated in the same manner as assigned counsel are compensated in districts which do not have a public defender.

(d) In lieu of merit and other increment raises paid to regular State employees, an assistant public defender shall receive as longevity pay an amount equal to four and eight-tenths percent (4.8%) of the annual salary set forth in the Current Operations Appropriations Act payable monthly after five years of service, nine and six-tenths percent (9.6%) after 10 years of service, and fourteen and four-tenths percent (14.4%) after 15 years of service. 'Service' means service as an assistant public defender."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

H.B. 727 **CHAPTER 305**

AN ACT TO EXEMPT THE TOWN OF TARBORO FROM THE TIME LIMITATION IN G.S. 160A-58.2 FOR THE EFFECTIVE DATE OF AN ANNEXATION ORDINANCE.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the requirements of G.S. 160A-58.2, the Town of Tarboro may adopt an ordinance annexing property with an effective date longer than six months but not to exceed 18 months from the date that the ordinance is adopted provided that:

(1) The deferred effective date for the annexation is requested by the owner of the property to be annexed; and
(2) The Town Council makes a finding based upon circumstances and evidence satisfactory to the Town Council that such effective date is in the best interest of the Town and the affected property owner.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 17th day of June, 1991.

S.B. 483 **CHAPTER 306**

AN ACT TO AMEND CHAPTER 745 OF THE 1989 SESSION LAWS TO INCREASE THE AUTHORIZED PROJECT COST OF A WHOLLY SELF-LIQUIDATING RESEARCH FACILITY TO BE LEASED TO THE UNITED STATES ENVIRONMENTAL PROTECTION AGENCY BY THE UNIVERSITY OF NORTH CAROLINA AT CHAPEL HILL.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 745 of the 1989 Session Laws reads as rewritten:

"Section 1. The purpose of this act is to authorize the design, construction and equipping, by the University of North Carolina at Chapel Hill ('the Institution') of a research facility (the 'Project') to be located on the campus of the Institution, to be leased by the Institution, as Lessor, to the United States Government or any agency thereof as Lessee, to be used by the United States Environmental Protection Agency pursuant to a lease (the 'Lease') with a term not to exceed 30 years, and to be designed, constructed, equipped and financed at a cost not to exceed ~~thirty million dollars ($30,000,000)~~ thirty-seven million dollars ($37,000,000) and to authorize the financing of the Project through the issuance of bonds to be repaid solely from revenue derived from the Project."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 148 **CHAPTER 307**

AN ACT TO INCREASE STATE EFFORT TO PREVENT DROPPING OUT OF SCHOOL BEFORE GRADUATION.

The General Assembly of North Carolina enacts:

Section 1. The State Board of Education shall encourage local units to explore alternative programs with Senate Bill 2 flexibility under the Performance-Based Accountability Program, to reduce dropouts.

Sec. 2. The State Board of Education and the State Board of Community Colleges shall adopt rules and procedures no later than April 1, 1992, to provide more accurate, comprehensive, and timely data on high school dropouts, alternative placements, progress, and follow-through in alternative programs, shall require that local school administrative units and the institutions of the Community Colleges system comply, and shall use a standard measure of accountability.

Sec. 3. The Department of Public Instruction shall:

(1) Conduct policy research on the issues of longer compulsory attendance, on the tying of the drivers license to staying in school, and the limiting of after-school employment hours, from those states that have implemented such changes; and

(2) Reevaluate current attendance law to assess whether it is being adequately enforced.

The research required in this section shall be completed and reported to the Joint Legislative Education Oversight Committee by April 1, 1992.

Sec. 4. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 327 **CHAPTER 308**

AN ACT CHANGING THE TIME NEWLY ELECTED MEMBERS OF THE SURRY COUNTY BOARD OF EDUCATION SHALL QUALIFY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 115C-37(d), those members of the Surry County Board of Education elected in 1992 and in subsequent years shall qualify by taking the oath of office prescribed in Article VI, Section 7, of the Constitution at a meeting of the Board of Education held in July following the election.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 532 **CHAPTER 309**

AN ACT TO ALLOW THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES TO ESTABLISH SECURITY REQUIREMENTS FOR CONTROLLED SUBSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-147(a) reads as rewritten:

"(a) There is hereby created the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services of the Department of Human Resources with the power and duty to adopt, amend and repeal rules to be followed in the conduct of State and local mental health, developmental disabilities, alcohol and drug abuse programs including education, prevention, intervention, treatment, rehabilitation and other related services. Such rules shall be designed to promote the amelioration or elimination of the mental health, developmental disabilities, or alcohol and drug abuse problems of the citizens of this State. The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall have the authority:

(1) To adopt rules regarding the
   a. Admission, including the designation of regions, treatment, and professional care of individuals admitted to a facility operated under the authority of G.S. 122C-181(a), that is now or may be established;
   b. Operation of education, prevention, intervention, treatment, rehabilitation and other related services as provided by area mental health, developmental disabilities, and substance abuse authorities under Part 4 of Article 4 of Chapter 122C of the General Statutes;
   c. Hearings and appeals of area mental health, developmental disabilities, and substance abuse authorities as provided for in Part 4 of Article 4 of Chapter 122C of the General Statutes;
   d. Requirements of the federal government for grants-in-aid for mental health, developmental disabilities, alcohol or drug abuse programs which may be made available to local programs or the State. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid;
(2) To adopt rules for the licensing of facilities for the mentally ill, developmentally disabled, and substance abusers, under Article 2 of Chapter 122C of the General Statutes.

(3) To advise the Secretary of the Department of Human Resources regarding the need for, provision and coordination of education, prevention, intervention, treatment, rehabilitation and other related services in the areas of:
   a. Mental illness and mental health,
   b. Developmental disabilities,
   c. Alcohol abuse, and
   d. Drug abuse;

(4) To review and advise the Secretary of the Department of Human Resources regarding all State plans required by federal or State law and to recommend to the Secretary any changes it thinks necessary in those plans; provided, however, for the purposes of meeting State plan requirements under federal or State law, the Department of Human Resources is designated as the single State agency responsible for administration of plans involving mental health, developmental disabilities, alcohol abuse, and drug abuse services;

(5) To adopt rules relating to the registration and control of the manufacture, distribution, security, and dispensing of controlled substances as provided by G.S. 90-100;

(6) To adopt rules to establish the professional requirements for staff of licensed facilities for the mentally ill, developmentally disabled, and substance abusers. Such rules may require that one or more, but not all staff of a facility be either licensed or certified. If a facility has only one professional staff, such rules may require that that individual be licensed or certified. Such rules may include the recognition of professional certification boards for those professions not licensed or certified under other provisions of the General Statutes provided that the professional certification board evaluates applicants on a basis which protects the public health, safety or welfare;

(7) Except where rule making authority is assigned under that Article to the Secretary of the Department of Human Resources, to adopt rules to implement Article 3 of Chapter 122C of the General Statutes;

(8) To adopt rules specifying procedures for waiver of rules adopted by the Commission."

Sec. 2. G.S. 90-100 reads as rewritten:

"§ *90-100. Rules and regulations.*

The Commission is authorized to promulgate rules and regulations relating to the registration and control of the manufacture,

distribution, security, and dispensing of controlled substances within this State."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 588 **CHAPTER 310**

AN ACT TO REQUIRE HOSPITALS TO ITEMIZE CHARGES ON DISCHARGED PATIENT'S BILL.

The General Assembly of North Carolina enacts:

Section 1. Part C of Article 5 of Chapter 131E of the General Statutes is amended by adding a new section to read:

"*§ 131E-91. Itemized charges on discharged patient's bill.*

All hospitals and ambulatory surgical facilities licensed pursuant to this Chapter shall, upon request of the patient within 30 days of discharge, present an itemized list of charges to all discharged patients.

The Commission shall adopt rules to ensure that this section is properly implemented and that patient bills which are not itemized include notification to the patient of his right to request an itemized bill. The Department shall not issue nor renew a license under this Chapter unless the applicant has demonstrated that the requirements of this section are being met."

Sec. 2. This act becomes effective October 1, 1991, and applies to discharges on or after that date.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 617 **CHAPTER 311**

AN ACT TO CHANGE THE PAY DATE FOR EMPLOYEES OF THE CLEVELAND COUNTY SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 422 of the 1981 Session Laws is repealed, as it applies to the Cleveland County School Administrative Unit.

Sec. 2. Notwithstanding the provisions of G.S. 115C-302(a), G.S. 115C-316(a), or any other provision of law, public school employees of the Cleveland County School Administrative Unit, except 12-month employees and bus drivers, shall be paid on the fifteenth day of each month. Nothing in this section shall have the effect of

changing the rate of pay for any employee of the Cleveland County School Administrative Unit.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 777 **CHAPTER 312**

AN ACT TO AMEND THE CHARTER OF THE CITY OF RALEIGH.

The General Assembly of North Carolina enacts:

Section 1. Subsection 32 of Section 22 of the Raleigh City Charter, Chapter 1184 of the 1949 Session Laws, is repealed and a new subsection 32 is enacted to read:

"(32) Condemnation of Property. When acquiring right-of-way for the construction or improvement of streets, the city may also locate and acquire such additional rights-of-way as may be necessary for the present or future relocation or initial location, above or below ground, of telephone, telegraph, electric and other lines, as well as gas, water, sewerage, oil and other pipelines to be operated by public utilities defined and regulated under Chapter 62 of the General Statutes. In acquiring real property by eminent domain the city may use the procedures of either Chapter 40A or Chapter 136 of the General Statutes."

Sec. 2. Subsection 46 of Section 22 of the Raleigh City Charter, Chapter 1184 of the 1949 Session Laws, is amended by adding a new paragraph to the existing subsection to read:

"The city may require the owners of all rental residential dwelling units that are not required to have smoke detectors under the North Carolina State Building Code to have smoke detectors installed in the units within 180 days after the passage of an ordinance requiring their installation."

Sec. 3. Section 33 of the Raleigh City Charter, Chapter 1184 of the 1949 Session Laws, is amended by lettering the existing language of the section as subsection (a) and adding a new subsection to read:

"(b) Notwithstanding the provisions of subsection (a), nothing herein shall be construed as preventing any official or employee covered by this section from purchasing a plot or plots from the city in a city-owned cemetery, nor shall any such official or employee be prohibited from participating in any rental or home ownership program sponsored or operated by the city, so long as the official or employee meets all the criteria for the program and so long as the

income of the recipient does not exceed sixty-five percent (65%) of the median area income based on household size. Participants in such a program must commit to occupying the unit acquired or rented as their personal dwelling and must commit to reside there at least three years unless prevented from doing so by extraordinary circumstances such as divorce, transfer of job, or death. The award of any such housing assistance to an employee shall be noted in the minutes of the City Council."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 785 **CHAPTER 313**

AN ACT TO ALLOW THE PAMLICO COUNTY SCHOOL BOARD TO CONVEY TO HOBUCKEN COMMUNITY DEVELOPMENT, INC., CERTAIN SCHOOL PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, the Pamlico County School Board may convey to Hobucken Community Development, Inc., a nonprofit corporation, at private sale, with or without consideration, all of its rights, title, and interest in the Hobucken School site as shown on the map recorded at Map Book 5, Page 12, Pamlico County Registry; except, the 72/100 acre portion of the land designated on the map as "2", which was previously conveyed to Hobucken Community Development, Inc., by deed dated March 31, 1969, and recorded in Deed Book 152, Page 234, Pamlico County Registry.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 891 **CHAPTER 314**

AN ACT TO CLARIFY QUALIFICATIONS FOR A STATE BUILDING COMMISSION MEMBER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-135.25(c)(3) reads as rewritten:

"(3) A licensed building contractor whose primary business is or was in the construction of buildings, or an employee of a company holding a general contractor's license, chosen from among not more than three persons nominated by the Carolinas ~~Branch, Associated General Contractors,~~ AGC

(Associated General Contractors), appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 912 **CHAPTER 315**

AN ACT TO AUTHORIZE CITIES TO VACATE AND CLOSE CERTAIN DWELLINGS FOUND TO BE IN VIOLATION OF THE MINIMUM HOUSING CODE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443 reads as rewritten:

"*§ 160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer.*

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of

evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling. However, notwithstanding any other provision of law, if the dwelling is located in a historic district of the city and the Historic District Commission determines, after a public hearing as provided by ordinance, that the dwelling is of particular significance or value toward maintaining the character of the district, and the dwelling has not been condemned as unsafe, the order may require that the dwelling be vacated and closed consistent with G.S. 160A-400.14(a).

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: 'This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.' Occupation of a building so posted shall constitute a misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not

be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance, then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then

current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned

according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under paragraphs 4 and 5 of this section to vacate and close or remove and demolish the dwelling."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

H.B. 1086 **CHAPTER 316**

AN ACT TO ESTABLISH THE PIEDMONT TRIAD RESEARCH INSTITUTE TO OPERATE THE PIEDMONT TRIAD GRADUATE ENGINEERING PROGRAM, BASED AT WAKE FOREST UNIVERSITY AND SERVING THE ENTIRE PIEDMONT TRIAD.

Whereas, North Carolina is the tenth largest state in population and must maintain and enhance its position as a significant center for high technology research, development, and manufacturing; and

Whereas, in order to accomplish this task, the State needs to combine and work with two of its most visible and important components -- its medical excellence and its base in information systems, the medical component being obvious by the excellent reputation of its universities and hospitals, and the information systems base being evidenced by the unrivaled "CONCERT" network and by its universities, in particular, the Center for Communications and

Signal Processing at North Carolina State University at Raleigh, and the Communications, Signal Processing Expert Systems, and the Application Specific Integrated Circuit -- Very Large Scale Integration (ASIC VLSI) Design Laboratory at North Carolina Agricultural and Technical State University; and

Whereas, the State can, by combining these and other resources, produce another island of excellence in the Piedmont Triad by forming the Piedmont Triad Research Institute and the Piedmont Triad Graduate Engineering Program, affiliated with the premier universities of the Piedmont Triad, Wake Forest University, Winston-Salem State University, and North Carolina Agricultural and Technical State University, as well as with North Carolina State University at Raleigh, the State's major engineering school; and

Whereas, with this strategic approach, a cooperative climate will develop whereby research and education in medicine, engineering, computer science, mathematics, and physical and chemical sciences will be heightened and whereby this environment will attract industries involved in these areas to the Triad as a conduit for research and technology transfer;

Now, therefore, the General Assembly of North Carolina enacts:

Section 1. Chapter 116 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 31.

"Piedmont Triad Research Institute and Graduate Engineering Program.

"§ 116-250. Piedmont Triad Regional Institute; establishment; board of directors; purpose.

(a) There is established the Piedmont Triad Research Institute as a nonprofit corporation registered and regulated pursuant to Chapter 55A of the General Statutes.

(b) The Articles of Incorporation of the Institute shall constitute the board of directors of the Institute of individuals representing industrial and business interests in the Triad area, and of representatives of the following universities:

(1) North Carolina Agricultural and Technical State University;
(2) North Carolina State University at Raleigh;
(3) Wake Forest University; and
(4) Winston-Salem State University.

(c) The Institute is established to further education and research in engineering, particularly as engineering may be applied to medicine.

"§ 116-251. Piedmont Triad Regional Institute's Director; funding administration duties.

The Director of the Piedmont Triad Research Institute shall report directly to the board of directors of the Institute. The Director shall administer the Institute's funds from three primary sources for the general operation of the Institute and the fourth for the operation of the Piedmont Triad Graduate Engineering Program established by G.S. 116-252. These sources of funds are as follows:

(1) Funds from external research funding agencies such as the National Science Foundation and the National Institutes of Health;

(2) Funds from industries in support of specific research projects;

(3) Funds from block grants from foundations and chambers of commerce; and

(4) Funds appropriated to the Institute from the State in support of the Piedmont Triad Graduate Engineering Program established by G.S. 116-252.

"*§ 116-252. Piedmont Triad Graduate Engineering Program; establishment; purpose.*

There is established the Piedmont Triad Graduate Engineering Program, to be housed in Winston-Salem in facilities provided by the Bowman Gray School of Medicine at Wake Forest University. The program shall support faculty and graduate students involved in engineering at the campuses of The University of North Carolina in order to allow their participation in engineering teaching and research in the Program, which shall provide much-needed university-level engineering education to the Piedmont Triad area.

The Program shall begin to be phased in effective for the academic year 1991-92.

"*§ 116-253. Piedmont Triad Graduate Engineering Program; Board of Governors of The University of North Carolina; adoption of rules.*

The Board of Governors, pursuant to its authority under G.S. 116-11, shall adopt rules, after consultation with the board of directors of the Piedmont Triad Research Institute, to implement this Article as it affects the ongoing roles of The University of North Carolina and its designated constituent institutions in the Piedmont Triad Graduate Engineering Program and in the education and research projects of the Institute."

Sec. 2. Nothing in this act obligates this General Assembly or future General Assembly to appropriate any funds to implement it or obligates the Board of Governors of The University of North Carolina to allocate any funds to implement it.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 18th day of June, 1991.

S.B. 150 **CHAPTER 317**

AN ACT TO ALLOW FOR THE PRODUCTION AND SALE OF FALLOW DEER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes of North Carolina is amended to add a new Article to read:

"ARTICLE 49H.

"Production and Sale of Fallow Deer.

"*§ 106-549.97. Regulation of fallow deer by Department of Agriculture; certain authority of North Carolina Wildlife Resources Commission not affected.*

(a) The Department of Agriculture shall regulate the production and sale of fallow deer for food purposes. The Board of Agriculture shall adopt rules for the production and sale of fallow deer for food purposes in such a manner as to provide for close supervision of any person, firm, or corporation producing and selling fallow deer for food purposes.

As used in this section, 'fallow deer' (*Dama dama spp.*) means a small European deer raised commercially for production and sale for food purposes.

(b) The North Carolina Wildlife Resources Commission shall regulate the possession and transportation of live fallow deer and may adopt rules to prevent the release or escape of fallow deer upon finding that it is necessary to protect live fallow deer or to prevent damage to the native deer population or its habitat.

"*§ 106-549.98. Inspection fees.*

The Commissioner may establish a fee at an hourly rate to be paid by the owner, proprietor, or operator of each slaughtering, meat-canning, salting, packing, rendering, or similar establishment for the purpose of defraying the expenses incurred in the inspection of fallow deer as required by Article 49B of Chapter 106 of the General Statutes."

Sec. 2. G.S. 113-129(1b) is rewritten to read:

"(1b) Big Game. -- ~~Deer, bear,~~ Bear, wild boar, ~~and~~ wild ~~turkey.~~ turkey, and deer, not to include fallow deer raised for production and sale under G.S. 106-549.97."

Sec. 3. G.S. 113-129(7c) is rewritten to read:

"(7c) Game Animals. -- Bear, ~~deer,~~ fox, rabbit, squirrel, ~~and~~ wild ~~bear;~~ boar, and deer, not to include fallow deer raised for production and sale under G.S. 106-549.97; bobcat, opossum, and raccoon except when trapped in

accordance with provisions relating to fur-bearing animals."

Sec. 4. G.S. 106-549.15(14) reads as rewritten:

"(14) 'Meat food product' means any product capable of use as human food which is made wholly or in part from any meat or other portion of the carcass of any cattle, sheep, swine, ~~or goats,~~ goats, or fallow deer, excepting products which contain meat or other portions of such carcasses only in a relatively small proportion or historically have not been considered by consumers as products of the meat food industry, and which are exempted from definition as a meat food product by the Board under such conditions as it may prescribe to assure that the meat or other portions of such carcasses contained in such product are not adulterated and that such products are not represented as meat food products. This term as applied to food products of equines shall have a meaning comparable to that provided in this subdivision with respect to cattle, sheep, swine, and goats."

Sec. 5. G.S. 106-549.15(22) reads as rewritten:

"(22) 'Renderer' means any person, firm, or corporation engaged in the business of rendering carcasses, or parts or products of the carcasses, of cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, except rendering conducted under inspection under this Article."

Sec. 6. G.S. 106-549.17 reads as rewritten:

"*§ 106-549.17. Inspection of animals before slaughter; humane methods of slaughtering.*

(a) For the purpose of preventing the use in intrastate commerce, as hereinafter provided, of meat and meat food products which are adulterated, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines before they shall be allowed to enter into any slaughtering, packing, meat-canning, rendering, or similar establishment in this State in which slaughtering and preparation of meat and meat food products of such animals are conducted for intrastate commerce; and all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines found on such inspection to show symptoms of disease shall be set apart and slaughtered separately from all other cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, and when so slaughtered, the carcasses of said cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines shall be subject to a careful

examination and inspection, all as provided by the rules and regulations to be prescribed by the Board as herein provided for.

(b) For the purpose of preventing the inhumane slaughtering of livestock, the Commissioner shall cause to be made, by inspectors appointed for that purpose, an examination and inspection of the method by which cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines are slaughtered and handled in connection with slaughter in the slaughtering establishments inspected under this law. The Commissioner may refuse to provide inspection to a new slaughtering establishment or may cause inspection to be temporarily suspended at a slaughtering establishment if the Commissioner finds that any cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines have been slaughtered or handled in connection with slaughter at such establishment by any method not in accordance with subsection (c) of this section until the establishment furnishes assurances satisfactory to the Commissioner that all slaughtering and handling in connection with slaughter of livestock shall be in accordance with such a method.

(c) Either of the following two methods of slaughtering of livestock and handling of livestock in connection with slaughter are found to be humane:

(1) In the case of cattle, calves, fallow deer, horses, mules, sheep, swine, and other livestock, all animals are rendered insensible to pain by a single blow or gunshot or an electrical, chemical, or other means that is rapid and effective, before being shackled, hoisted, thrown, cast, or cut; or

(2) By slaughtering in accordance with the ritual requirements of the Jewish faith or any other religious faith that prescribes a method of slaughter whereby the animal suffers loss of consciousness by anemia of the brain caused by the simultaneous and instantaneous severance of the carotid arteries with a sharp instrument and handling in connection with such slaughtering."

Sec. 7. G.S. 106-549.18 reads as rewritten:

"§ *106-549.18. Inspection; stamping carcass.*

For the purposes hereinbefore set forth the Commissioner shall cause to be made by inspectors appointed for that purpose, as hereinafter provided, a post mortem examination and inspection of the carcasses and parts thereof of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines, capable of use as human food, to be prepared at any slaughtering, meat-canning, salting, packing, rendering, or similar establishment in this State in which such articles are prepared for intrastate commerce; and the carcasses

and parts thereof of all such animals found to be not adulterated shall be marked, stamped, tagged, or labeled, as 'Inspected and Passed'; and said inspectors shall label, mark, stamp, or ~~tax~~ tag as 'Inspected and Condemned,' all carcasses and parts thereof of animals found to be adulterated; and all carcasses and parts thereof thus inspected and condemned shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any such establishment which fails to so destroy any such condemned carcass or part thereof, and said inspectors, after said first inspection shall, when they deem it necessary, reinspect said carcasses or parts thereof to determine whether since the first inspection the same have become adulterated and if any carcass or any part thereof shall, upon examination and inspection subsequent to the first examination and inspection, be found to be adulterated, it shall be destroyed for food purposes by the said establishment in the presence of an inspector, and the Commissioner or his authorized representative may remove inspectors from any establishment which fails to [do] so destroy any such condemned carcass or part thereof."

Sec. 8. G.S. 106-549.19 reads as rewritten:

"§ *106-549.19. Application of Article; place of inspection.*

The foregoing provisions shall apply to all carcasses or parts of carcasses of cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines or the meat or meat products thereof, capable of use as human food, which may be brought into any slaughtering, meat-canning, salting, packing, rendering, or similar establishment, where inspection under this Article is maintained, and such examination and inspection shall be had before the said carcasses or parts thereof shall be allowed to enter into any department wherein the same are to be treated and prepared for meat food products; and the foregoing provisions shall also apply to all such products which, after having been issued from any such slaughtering, meat-canning, salting, packing, rendering, or similar establishment, shall be returned to the same or to any similar establishment where such inspection is maintained. The Commissioner or his authorized representative may limit the entry of carcasses, part of carcasses, meat and meat food products, and other materials into any establishment at which inspection under this Article is maintained, under such conditions as he may prescribe to assure that allowing the entry of such articles into such inspected establishments will be consistent with the purposes of this and the subsequent Article."

Sec. 9. G.S. 106-549.22 reads as rewritten:

"§ *106-549.22. Rules and regulations of Board.*

The Commissioner or his authorized representative shall cause to be made, by experts in sanitation, or by other competent inspectors, such inspection of all slaughtering, meat-canning, salting, packing, rendering, or similar establishments in which cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines are slaughtered and the meat and meat food products thereof are prepared for intrastate commerce as may be necessary to inform himself concerning the sanitary conditions of the same, and the Board shall prescribe the rules and regulations of sanitation under which such establishments shall be maintained; and where the sanitary conditions of any such establishment are such that the meat or meat food products are rendered adulterated, the Commissioner or his authorized representative shall refuse to allow said meat or meat food products to be labeled, marked, stamped, or tagged as 'North Carolina Department of Agriculture Inspected and Passed.'"

Sec. 10. G.S. 106-549.23 reads as rewritten:

"*§ 106-549.23. Prohibited slaughter, sale and transportation.*

No person, firm, or corporation shall, with respect to any cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, or any carcasses, parts of carcasses, meat or meat food products of any such animals:

(1) Slaughter any of these animals or prepare any of these articles which are capable of use as human food, at any establishment preparing any such articles for intrastate commerce except in compliance with the requirements of this and the subsequent Article;

(2) Slaughter, or handle in connection with slaughter, any such animals in any manner not in accordance with G.S. 106-549.17(c) of this Article;

(3) Sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce:

a. Any of these articles which (i) are capable of use as human food and (ii) are adulterated or misbranded at the time of sale, transportation, offer for sale or transportation, or receipt for transportation; or

b. Any articles required to be inspected under this Article unless they have been so inspected and passed; or

(4) Do, with respect to any of these articles which are capable of use as human food, any act while they are being transported in intrastate commerce or held for sale after such transportation, which is intended to cause or has the effect of causing the articles to be adulterated or misbranded."

Sec. 11. G.S. 106-549.25 reads as rewritten:

"*§ 106-549.25. Slaughter, sale and transportation of equine carcasses.*

No person, firm, or corporation shall sell, transport, offer for sale or transportation, or receive for transportation, in intrastate commerce, any carcasses of horses, mules, or other equines or parts of such carcasses, or the meat or meat food products thereof, unless they are plainly and conspicuously marked or labeled or otherwise identified as required by regulations prescribed by the Board to show the kinds of animals from which they were derived. When required by the Commissioner or his authorized representative, with respect to establishments at which inspection is maintained under this Article, such animals and their carcasses, parts thereof, meat and meat food products shall be prepared in establishments separate from those in which cattle, sheep, swine, fallow deer, or goats are slaughtered or their carcasses, parts thereof, meats or meat food products are prepared."

Sec. 12. G.S. 106-549.26 reads as rewritten:

"*§ 106-549.26. Inspection of establishment; bribery of or malfeasance of inspector.*

The Commissioner or his authorized representative shall appoint from time to time inspectors to make examination and inspection of all cattle, sheep, swine, goats, fallow deer, horses, mules, and other equines the inspection of which is hereby provided for, and of all carcasses and parts thereof, and of all meats and meat food products thereof, and of the sanitary conditions of all establishments in which such meat and meat food products hereinbefore described are prepared; and said inspectors shall refuse to stamp, mark, tag or label any carcass or any part thereof, or meat food product therefrom, prepared in any establishment hereinbefore mentioned, until the same shall have actually been inspected and found to be not adulterated; and shall perform such other duties as are provided by this and the subsequent Article and by the rules and regulations to be prescribed by said Board and said Board shall, from time to time, make such rules and regulations as are necessary for the efficient execution of the provisions of this and the subsequent Article, and all inspections and examinations made under this Article shall be such and made in such manner as described in the rules and regulations prescribed by said Board not inconsistent with the provisions of this Article and as directed by the Commissioner or his authorized representative. Any person, firm, or corporation, or any agent or employee of any person, firm, or corporation, who shall give, pay, or offer, directly or indirectly, to any inspector, or any other officer or employee of this State authorized to perform any of the duties prescribed by this and the subsequent Article or by the rules and regulations of the Board or by the Commissioner or his authorized representative any money or other thing of value, with intent to influence said inspector, or other

officer or employee of this State in the discharge of any duty herein provided for, shall be deemed guilty of a felony and, upon conviction thereof, shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years; and any inspector, or other officer or employee of this State authorized to perform any of the duties prescribed by this Article who shall accept any money, gift, or other thing of value from any person, firm, or corporation, or officers, agents, or employees thereof, given with intent to influence his official action, or who shall receive or accept from any person, firm, or corporation engaged in intrastate commerce any gift, money, or other thing of value given with any purpose or intent whatsoever, shall be deemed guilty of a felony and shall, upon conviction thereof, be summarily discharged from office and shall be punished by a fine not less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) and by imprisonment for not less than one year nor more than three years."

Sec. 13. G.S. 106-549.27(a) reads as rewritten:

"(a) The provisions of this Article requiring inspection of the slaughter of animals and the preparation of the carcasses, parts thereof, meat and meat food products at establishments conducting such operations shall not

(1) Apply to the slaughtering by any person of animals of his own raising, and the preparation by him and ~~transporation~~ transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals exclusively for use by him and members of his household and his nonpaying guests and employees; nor

(2) To the custom slaughter by any person, firm, or corporation of cattle, sheep, ~~swine or~~ swine, fallow deer, or goats delivered by the owner thereof for such slaughter, and the preparation by such slaughterer and transportation in intrastate commerce of the carcasses, parts thereof, meat and meat food products of such animals, exclusively for use, in the household of such owner, by him, and members of his household and his nonpaying guests and employees: Provided, that all carcasses, parts thereof, meat and meat food products derived from custom slaughter shall be identified as required by the Commissioner, during all phases of slaughtering, chilling, cooling, freezing, packing, meat canning, rendering, preparation, storage and transportation; provided further, that the custom slaughterer does not engage in the business of buying or selling any carcasses, parts thereof, meat or meat food products of any

cattle, sheep, swine, ~~goats or~~ goats, fallow deer, or equines, capable of use as human food, unless the carcasses, parts thereof, meat or meat food products have been inspected and passed and are identified as having been inspected and passed by the Commissioner or the United States Department of Agriculture."

Sec. 14. G.S. 106-549.28 reads as rewritten:

"§ *106-549.28. Regulation of storage of meat.*

The Board may by regulations prescribe conditions under which carcasses, parts of carcasses, meat, and meat food products of cattle, sheep, swine, goats, fallow deer, horses, mules, or other equines, capable of use as human food, shall be stored or otherwise handled by any person, firm, or corporation engaged in the business of buying, selling, freezing, storing, or transporting, in or for intrastate commerce, such articles, whenever the Board deems such action necessary to assure that such articles will not be adulterated or misbranded when delivered to the consumer. Willful violation of any such regulation is a misdemeanor and punishable by a fine of not over five hundred dollars ($500.00) and imprisonment for not over six months or both fine and imprisonment."

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 213 **CHAPTER 318**

AN ACT TO REMOVE CERTAIN LAND IN HAMMOCKS BEACH STATE PARK FROM THE STATE NATURE AND HISTORIC PRESERVE AND THE STATE PARKS SYSTEM TO ALLOW THE EXCHANGE OF PROPERTY FOR BOUNDARY MANAGEMENT.

The General Assembly of North Carolina enacts:

Section 1. A new section is added to Article 25B of Chapter 143 to read as follows:

"§ *143-260.10D. Removal of land at Hammocks Beach State Park from the State Nature and Historic Preserve.*

Notwithstanding the provisions of G.S. 143-260.10(1), the tract identified as a portion of the property legally described in Deed Book 414, Page 607, Onslow County Registry, containing 0.063 acres; beginning at a point located S 25°19'50" W, 60.86 feet, thence S 02°10'40" E, 33.61 feet from the southeast corner of above reference property, proceeding from said beginning point S 02°10'40" E, 32.73 feet, thence S 69°12'45" W, 176.47 feet to a point, thence N

59°47'25" E, 189.47 feet to the point of beginning; as shown on a survey prepared by John P. McLean Engineering Associates and entitled 'Exhibit Map Showing Land Swap Between N.C. Park Service and Hammocks Point' dated June 29, 1990, is removed from the State Nature and Historic Preserve.

The State of North Carolina may only exchange this land for other land for inclusion in Hammocks Beach State Park or sell the land and use the proceeds for that purpose. The State of North Carolina may not otherwise sell or exchange this land.

The removal of the portion of Hammocks Beach State Park under this section achieves the requirements and purposes of Article 2C of Chapter 113 of the General Statutes and constitutes a deletion from the State Parks System as required by G.S. 113-44.14."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 368 **CHAPTER 319**

AN ACT TO PERMIT THE CITY OF MONROE TO DISPOSE OF CERTAIN PROPERTY ACQUIRED BY EMINENT DOMAIN AND TO AUTHORIZE A DELAY IN THE 1991 MONROE MUNICIPAL ELECTION.

The General Assembly of North Carolina enacts:

Section 1. The City Council of the City of Monroe may acquire by condemnation, pursuant to the provisions of Chapter 40A of the General Statutes, a tract of land in the City of Monroe, Union County, North Carolina, and more particularly described as follows:

BEGINNING at a point on the eastern right of way line of Boyte Street, said point being located S. 6 deg. 19 min. 21 sec. W. 108 feet from the point where the eastern right of way line of Boyte Street intersects the southern right of way line of Fairley Avenue (Fairley Avenue having a 46-foot right of way and Boyte Street having a 45-foot right of way) the same being the southwest corner of Lot #23 of Block 6 of Vann Heights Sub-division as shown by plat recorded on the fly leaf of Deed Book 40, Union County Registry, and runs thence along and with the southern line of Lot #23 S. 83 deg. 40 min. 32 sec. E. 145.97 feet to a point on the western edge of a 10-foot alley, thence along and with the western edge of said alley S. 6 deg. 14 min. 04 sec. W. 34.47 feet to a point, thence N. 83 deg. 48 min. 39 sec. W. 146.02 feet to a point on the eastern right of way line of Boyte Street, thence along

and with the eastern right of way line of Boyte Street N. 06 deg. 19 min. 21 sec. E. 34.81 feet to the point of BEGINNING and being the northern portion of Lot #22 of Vann Heights as shown upon the plat hereinabove mentioned, and being the same property conveyed to Dan Coleman by deed dated December 12, 1922, and recorded in Deed Book 58, page 730, to which reference is specifically made.

Sec. 2. G.S. 160A-279 reads as rewritten:

"§ *160A-279. Sale of property to entities carrying out a public purpose; procedure.*

(a) Whenever a city or county is authorized to appropriate funds to any public or private entity which carries out a public purpose, the city or county may, in lieu of or in addition to the appropriation of funds, convey by private sale to such an entity any real or personal property which it owns; ~~provided no property acquired by the exercise of eminent domain may be conveyed under this section;~~ provided that no such conveyance may be made to a for-profit corporation. The city or county shall attach to any such conveyance covenants or conditions which assure that the property will be put to a public use by the recipient entity. The procedural provisions of G.S. 160A-267 shall apply.

(b) Notwithstanding any other provision of law, this section applies only to cities and counties and not to any other entity which this Article otherwise applies to.

(c) The resolution or order required under G.S. 160A-267 for conveyances under this section must be approved by the unanimous affirmative vote of the council members or county board of commissioners, not counting vacancies or members excused from voting in order to be effective under this section.

(d) This section does not limit the right of any entity to convey property by private sale when that right is conferred by another law, public, or local."

Sec. 3. In the event that the United States Justice Department, under the Voting Rights Act of 1965, has not precleared annexations by the City of Monroe, which the Department has under consideration, or in the event that the Department interposes an objection to any of the annexations which the Monroe City Council determines to adversely affect the conduct and holding of the City's regular 1991 municipal election, the Monroe City Council may delay the 1991 municipal election and may reschedule the election in accordance with G.S. 160A-23.1(d)(4). In the event that the election is rescheduled as provided by this section, current officeholders shall hold over until their successors are elected and qualified, and the organizational meeting of the new council may be held at any time

after the results of the election have been officially determined and published, but not later than the time and date of the first regular meeting of the council in July 1992.

Sec. 4. This act is effective upon ratification, applies only to the City of Monroe, and as to Sections 1 and 2 of this act applies only for the property acquired pursuant to Section 1 of this act.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 389 **CHAPTER 320**

AN ACT TO ABOLISH THE NORTH CAROLINA MARINE SCIENCE COUNCIL, TO CREATE THE NORTH CAROLINA COUNCIL ON OCEAN AFFAIRS, AND TO REQUIRE THE OFFICE OF MARINE AFFAIRS TO ADMINISTER THE NORTH CAROLINA AQUARIUMS.

The General Assembly of North Carolina enacts:

Section 1. Part 8 of Article 9 of Chapter 143B of the General Statutes is repealed.

Sec. 2. Article 9 of Chapter 143B of the General Statutes is amended by adding a new Part to follow Part 8A to read:

"Part 8B. North Carolina Council on Ocean Affairs.

"*§ 143B-390.10. North Carolina Council on Ocean Affairs -- creation; purpose; powers; and duties.*

(a) The North Carolina Council on Ocean Affairs is created. The Council shall be administered by the Department of Administration.

(b) The Council shall serve as the central ocean and marine policy planning body of the State and shall communicate and cooperate with federal, State, regional, and local bodies and agencies to the end of effecting a coordinated ocean and marine policy.

(c) The Council shall have the following powers and duties:

(1) To encourage the use and study of the ocean and estuarine and coastal waters of North Carolina by citizens and industries of the State;

(2) To encourage education and training in ocean science, technology, and policy in North Carolina, including extension and continuing education;

(3) To maintain liaison with the corresponding authorities of other coastal states;

(4) To develop and maintain a continuing inventory of the ocean and marine resources of the State;

(5) To assist in the coordination of efforts toward responsible development of the State's ocean and marine resources with

proper attention being given to the need for wise use of these resources;

(6) To coordinate plans for and work with relevant governmental agencies in the implementation of all federal, State, and local legislation relating to ocean and marine resources;

(7) To examine research, education, and management programs relating to ocean and marine resources and to recommend revision when appropriate;

(8) To secure directly from any executive department, agency, subdivision, or independent instrumentality of State or local governments any information it deems necessary to carry out its functions;

(9) To review an annual update of activities of the North Carolina Aquariums and to provide input into the mission and future programs based on any North Carolina Council on Ocean Affairs work that may be applicable to the State Aquariums;

(10) To advise the Governor and Secretary of Administration upon any matter the Governor or Secretary may refer to the North Carolina Council on Ocean Affairs and to advise and make recommendations on ocean and marine policy to the Governor;

(11) To provide the Joint Legislative Commission on Governmental Operations with five copies of any reports submitted to the Governor; and

(12) To undertake any other duties assigned to it by the Governor or the Secretary of Administration.

"*§ 143B-390.11. North Carolina Council on Ocean Affairs -- membership; terms; rules of procedure; meetings; expenses.*

(a) The Council shall consist of 16 members, two of which shall serve ex officio, from the public and private academic and scientific institutions in the State and from the various industries and professions in the State concerned with the exploration and use of the ocean and marine resources.

(b) The Governor shall appoint six members. These members shall represent the following interests:

(1) One member from the field of ocean or coastal policy or law;

(2) One member from the field of coastal or marine ecology;

(3) One member from the field of marine or fishery economics;

(4) One member from the fields of marine anthropology or sociology; and

(5) Two at-large members from coastal counties.

(c) The President Pro Tempore of the Senate shall appoint four members. These members shall represent the following interests:

(1) One member from a marine-related industry;

(2) One member from the field of marine education;

(3) One at-large member from a coastal county; and

(4) One member from the field of coastal or ocean planning.

(d) The Speaker of the House of Representatives shall appoint four members. These members shall represent the following interests:

(1) One member from the field of commercial fisheries;

(2) One member from the field of recreational fisheries;

(3) One at-large member from a coastal county; and

(4) One member from a marine-related industry.

(e) The Governor shall appoint two more members to serve ex officio. Ex officio members shall have no vote. These members shall represent the following interests:

(1) One member from the Department of Environment, Health, and Natural Resources who shall be an employee of the Department whose responsibilities include coastal or marine matters; and

(2) One member from the Department of Economic and Community Development who shall be an employee of the Department whose responsibilities include travel and tourism.

(f) The initial terms shall begin October 1, 1991. To achieve staggered terms, the initial terms for members appointed pursuant to subdivisions (b)(4) through (b)(5), (c)(3), (c)(4), (d)(3), and (d)(4) shall expire September 30, 1993. The initial terms for members appointed pursuant to subdivisions (b)(1) through (b)(3), (c)(1), (c)(2), (d)(1), and (d)(2) shall expire September 30, 1995. Except for ex officio members, all succeeding terms for members shall be four-year terms. Each ex officio member shall serve for an indefinite term at the pleasure of the Governor.

(g) A vacancy shall occur automatically when a member or an ex officio member ceases to qualify for his appointment under the terms of subsections (b) through (e). In the event of a vacancy arising otherwise than by expiration of the term, the Governor shall appoint a successor of like qualifications in accordance with subsections (b) through (e). Except for an ex officio member, a successor member shall then serve the remainder of his predecessor's term.

(h) The Governor shall designate a member of the Council to serve as the Chairperson at the pleasure of the Governor.

(i) Membership on the North Carolina Council on Ocean Affairs is an office that may be held concurrently with other elective or

appointive offices in addition to the maximum number of offices permitted to be held by one person under G.S. 128-1.1.

(j) Any member of the Council may be removed from office in accordance with the provisions of G.S. 143B-16.

(k) The Council shall adopt rules of procedure subject to the approval of the Secretary of Administration. The Council may meet four times per year and at other times if the Council obtains the prior approval of the Secretary of Administration. Regular attendance at Council meetings is required. The rules of procedure developed by the Council shall include rules for declaring any appointment on the Council to be vacant for failure of a member to attend meetings or to otherwise perform his duty. A majority of the Council shall constitute a quorum for the transaction of business.

(l) Members of the Council other than ex officio members shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5."

Sec. 3. G.S. 143B-390.2 reads as rewritten:

"§ *143B-390.2. Office of Marine Affairs -- organization; powers and duties.*

(a) The Office shall be organized as prescribed by the Secretary of Administration and exercise the following powers and duties:

(1) ~~To administer the operations of the three North Carolina Marine Resources Centers;~~

(1a) To establish and maintain the North Carolina Aquariums;

(1b) To administer the operations of the North Carolina Aquariums, such administrative duties to include, but not be limited to the following:

a. Adopt goals and objectives for the Aquariums and review and revise these goals and objectives periodically;

b. Review and approve requests for use of the Aquarium facilities and advise the Secretary of Administration on the most appropriate use consistent with the goals and objectives of the Aquariums;

c. Continually review and evaluate the types of projects and programs being carried out in the Aquarium facilities and determine if the operation of the facilities is in compliance with the established goals and objectives;

d. Recommend to the Secretary of Administration any policies and procedures needed to assure effective staff performance and proper liaison among Aquarium facilities in carrying out the overall purposes of the Aquarium programs;

e. Review Aquarium budget submissions to the Secretary of Administration;

f. Recruit and recommend to the Secretary of Administration candidates for the positions of directors of the North Carolina Aquariums; and

g. Create local advisory committees in accordance with the provisions of G.S. 143B-390.4.

(2) ~~To provide~~ Provide staff to the North Carolina ~~Marine Science Council~~ Council on Ocean Affairs in furtherance of the Council's statutory powers and duties;

(3) ~~To advise~~ Advise the Secretary of Administration regarding the analysis, planning and implementation of current and future State and federal goals, policies and programs relating to the ocean and marine resources of North ~~Carolina;~~ Carolina, such duties to include, but not be limited to, giving advice regarding:

~~(4) To advise the Secretary of Administration in providing~~

a. Providing recommendations to other educational, informational and policy-making bodies regarding marine and ocean resource issues;

~~(5) To review research proposals submitted for State matching funds for The University of North Carolina Sea Grant College Program;~~

~~(6) To administer~~

b. Administering the State Outer Continental Shelf (OCS) Task Force and coordinate State participation activities in the federal outer continental shelf resource recovery programs as provided under the OCS Lands Act Amendments of 1978 (43 USC ~~§ 1801);~~ §§ 1801 **et seq.**) and the OCS Lands Act Amendments of 1986 (43 USC §§ 1331 **et seq.**); and

c. Coordinating necessary legal or technical research to carry out the duties set forth in this subdivision.

(7) ~~To assume~~ Assume any other powers and duties assigned to it by the Secretary.

(b) The Secretary may adopt any rules and procedures necessary to implement this section."

Sec. 4. Part 8A of Article 9 of Chapter 143B of the General Statutes is amended by adding two new sections after G.S. 143B-390.2 to read:

"*§ 143B-390.3. North Carolina Aquariums; purpose.*

The purpose of establishing and maintaining the North Carolina Aquariums is to promote an awareness, understanding, and appreciation of the diverse natural and cultural resources associated

with North Carolina's oceans, estuaries, rivers, streams, and other aquatic environments.

"*§ 143B-390.4. Local advisory committees; duties; membership.*

Local advisory committees created pursuant to G.S. 143B-390.2(a)(1b) shall assist each North Carolina Aquarium in its efforts to establish projects and programs and to assure adequate citizen-consumer input into those efforts. Members of these committees shall be appointed by the Secretary of Administration for three-year terms from nominations made by the Director of the Office of Marine Affairs. Each committee shall select one of its members to serve as chairperson. Members of the committees shall serve without compensation for services or expenses."

Sec. 5. The equipment, records, documents, files, personnel, and administrative rules of the North Carolina Marine Science Council are transferred to the North Carolina Council on Ocean Affairs.

Sec. 6. This act becomes effective September 30, 1991.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 412 **CHAPTER 321**

AN ACT TO AMEND CERTIFICATION REQUIREMENTS FOR WATER TREATMENT FACILITY OPERATORS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90A-25(a) reads as rewritten:

"(a) ~~An applicant, upon meeting satisfactorily the appropriate requirements shall be issued a suitable certificate by the Board of Certification designating the level of his competency. Certificates shall be permanent unless revoked for cause or replaced by one of a higher grade.~~ The Board shall issue a certificate to an applicant who meets the requirements for certification and pays the required fee. The certificate shall state the grade of certification appropriate for the classification of water treatment facilities the applicant is qualified to operate."

Sec. 2. Chapter 90A of the General Statutes is amended by adding a new section to read:

"*§ 90A-25.1. Renewal of certificate.*

A certificate expires on December 31 of the year in which it is issued or renewed. The Board, with the advice and assistance of the Secretary of Environment, Health, and Natural Resources, may establish minimum continuing education requirements that an applicant must meet to renew a certificate. The Board shall renew a

certificate if the applicant meets the continuing education requirements imposed as a condition for renewal, pays the required renewal fee plus any renewal fees in arrears, and, if the application is late, pays the late penalty."

Sec. 3. G.S. 90A-26 reads as rewritten:

"§ *90A-26. Revocation or suspension of certificate.*

The Board of Certification, in accordance with the procedure set forth in Chapter 150B of the General Statutes of North Carolina, ~~may singly or in combination,~~ may issue a reprimand ~~to,~~ to an operator, or ~~revoke or suspend~~ suspend or revoke the certificate of an ~~operator~~ operator, when ~~it is found~~ it finds any of the following:

(1) ~~that the~~ The operator has practiced fraud or ~~deception;~~ deception.

(2) ~~that~~ The operator failed to use reasonable care, judgment, ~~or the application of his knowledge~~ knowledge, or ability ~~was not used~~ in the performance of ~~his duties; or~~ an operator's duties.

(3) ~~that the~~ The operator is incompetent or unable to properly perform ~~his~~ the ~~duties.~~ duties of an operator.

(4) The operator has failed to comply with the requirements for certification or renewal of certification."

Sec. 4. G.S. 90A-27 reads as rewritten:

"§ *90A-27. Application fee.*

~~(a) The Board of Certification, in establishing procedures for receiving applications for certification, shall impose fees, or schedules of fees, adequate to meet the anticipated costs of administering the classification and certification programs.~~

~~(b) In establishing procedures for receiving renewal applications, the Board of Certification may establish fees or a schedule of fees, adequate to meet the anticipated costs of renewal of certification, not to exceed fifty dollars ($50.00) per license.~~

The Board may establish a schedule of fees for the issuance or renewal of a certificate to cover the costs of administering the certification programs. The fee for issuing or renewing a certificate may not exceed fifty dollars ($50.00). The Board may impose a penalty not to exceed thirty dollars ($30.00) for the late renewal of a certificate."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 469 **CHAPTER 322**

AN ACT TO AUTHORIZE ROCKINGHAM COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax.

(a) Authorization and Scope. The Rockingham County Board of Commissioners may, by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto, levy a room occupancy tax of three percent (3%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by a hotel, motel, inn, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by educational organizations, religious organizations, or summer camps.

(b) Collection. Every operator of a business subject to the tax levied under this act shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this act. A tax levied under this act is due and payable to the county finance officer in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this act is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of

failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this act or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and Use of Tax Revenue. Rockingham County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Rockingham County Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to further the development of travel, tourism, and conventions in the county through State, national, and international advertising and promotion. As used in this subsection, "net proceeds" means gross proceeds less the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, may not be earlier than July 1, 1991, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this act may be repealed by a resolution adopted by the Rockingham County Board of Commissioners. Repeal of a tax levied under this act shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this act does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Tourism Development Authority.

(a) Appointment and Membership. When the board of commissioners adopts a resolution levying a room occupancy tax under this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act and shall be composed of the following eleven members:

(1) The Executive Director of the Rockingham County Economic Development Commission, who shall serve as an ex officio, nonvoting member.

(2) A county commissioner appointed by the Rockingham County Board of Commissioners, who shall serve as an ex officio, nonvoting member.

(3) Four owners or operators of hotels, motels, or other taxable accommodations, appointed as follows: one by the Rockingham County Board of Commissioners and one by each chamber of commerce in Rockingham County. Two of these four appointees shall own or operate hotels, motels, or other accommodations with more than 50 rental units and two shall own or operate hotels, motels, or other accommodations with 50 or fewer rental units.

(4) Five individuals involved in tourist businesses who have demonstrated an interest in tourism development and may or may not own or operate hotels, motels, or other taxable accommodations, appointed as follows: one by each chamber of commerce in Rockingham County and two by the Rockingham County Board of Commissioners.

All members of the Authority shall serve without compensation. Vacancies in the Authority shall be filled by the appointing authority of the member creating the vacancy. Members appointed to fill vacancies shall serve for the remainder of the unexpired term which they are appointed to fill. Except as provided in subsection (b) for initial members, members shall serve three-year terms. Members may serve no more than two consecutive terms. The members shall elect a chair from the membership of the Authority, who shall serve for a term of two years. The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Rockingham County shall be the ex officio finance officer of the Authority.

(b) Terms of Initial Members. The following initial members shall serve terms of other than three years:

(1) The county commissioner appointed under subdivision (a)(2) and the member appointed by the board of commissioners under subdivision (a)(3) shall serve one-year terms.

(2) One of the members appointed by a chamber of commerce under subdivision (a)(3), one of the members appointed by a chamber of commerce under subdivision (a)(4), and one of the members appointed by the board of commissioners under subdivision (a)(4), as designed by the appointing body, shall serve two-year terms.

(c) Duties. The Authority shall promote travel, tourism, and conventions in Rockingham County. In performing its duties, the Authority may contract with any person, firm, or agency to advise and assist it and may recommend to the board of county commissioners that county staff be employed for this advice and assistance. Any county staff employed upon a recommendation made by the Authority shall be hired and supervised by the Authority, which shall pay the salaries and expenses of this staff.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of county commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 3. Review of Levy and Authority.

Three years after the effective date of a tax levied under this act, the Rockingham County Board of Commissioners shall conduct a thorough review of the tax and the function of the Tourism Development Authority established under this act to determine the effectiveness of the levy and of the Authority.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 479 **CHAPTER 323**

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE TOWN OF SMITHFIELD TO INCLUDE THE JOHNSTON COUNTY COUNTRY CLUB.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Town of Smithfield are extended to include the following described property:

FIRST TRACT: BEGINNING at a stake in Ralph Johnson's line, runs thence with line of Lot No. 9 South 87 degrees East 1223 feet to a stake in the path; thence with the path North 10 degrees 30 minutes East 500 feet to a stake; thence North 88 degrees 30 minutes West 1697 feet to a stake, W. B. Johnson's line; thence South 50 degrees East 524 feet to a pine; thence South 6 degrees West 142 feet to the BEGINNING, containing 14.9 acres, more or less.

SECOND TRACT: BEGINNING at a stake 240 feet from the original corner in the high water of Holt's Lake and runs as the original line North 6 degrees 15 minutes East 1026 feet to a stake; thence North 77 degrees West 976 feet to a stake near a path; thence South 54 degrees 30 minutes West 348 feet to a stake in a ditch; thence South 3 degrees 30 minutes East 208 feet to a stake; thence

South 10 degrees 30 minutes West 472 feet to the highwater mark of Holt Lake; thence as the highwater mark South 65 degrees East 202 feet to a stake; thence leaving the highwater mark North 16 degrees 15 minutes East 210 feet to a stake; thence South 56 degrees 15 minutes East 238 feet to a stake; thence North 87 degrees 15 minutes East 285 feet; thence South 70 degrees 45 minutes East 346 feet to a stake; thence 30 degrees 45 minutes East 281 feet to the BEGINNING, containing twenty-two (22) acres, more or less.

THIRD TRACT: BEGINNING at a stake in N. G. Rand's line and runs South 79 degrees West 40 poles to a stake on the West side of the Mill Path; thence North 3 1/2 degrees east 76 1/2 poles to a black gum in the run of a small branch; thence down the run of said branch, to a stake in R. E. Lee's line; thence with said line South 3 1/2 degrees West 75 1/2 poles to the BEGINNING, containing eighteen (18) acres, more or less.

FOURTH TRACT: BEGINNING at a stake in a branch at the edge of Holt's Lake and runs as a highwater mark of said Lake as follows: South 31 degrees 30 minutes West 112 feet, South 15 degrees East 93 feet, South 19 degrees 15 minutes East 187 feet, South 31 degrees West 120 feet, North 85 degrees West 79 feet, South 29 degrees West 140 feet, South 19 degrees West 40 feet, South 28 degrees 15 minutes East 100 feet, South 27 degrees 45 minutes West 74 feet, South 12 degrees 45 minutes West 155 feet; South 55 degrees West 124 feet, South 83 degrees 15 minutes West 172 feet, South 47 degrees 15 minutes West 158 feet, South 81 degrees West 118 feet, North 28 degrees West 74 feet, North 79 degrees 15 minutes West 330 feet, North 76 degrees 15 minutes West 1012 feet to a stake the Ralph Johnson Corner; thence as his line North 6 degrees 15 minutes East 2010 feet to Lee's Branch; thence as the meanderings of said branch as follows: South 51 degrees 15 minutes East 124 feet, South 41 degrees 15 minutes East 96 feet, South 6 degrees East 172 feet, South 39 degrees 30 minutes East 119 feet, South 26 degrees 30 minutes East 115 feet, South 8 degrees 35 minutes East 171 feet, South 20 degrees 30 minutes East 102 feet, South 28 degrees 15 minutes East 87 feet to a stake, Ed Lee's corner; thence as his line South 4 degrees 10 minutes West 1262 feet; thence North 81 degrees 30 minutes East 661 feet; thence North 4 degrees 40 minutes East 632 feet; thence South 69 degrees 45 minutes East 265 feet to the BEGINNING, containing by estimation 39 acres, more or less. LESS AND EXCEPT a tract containing four (4) acres, more of less, conveyed to R. Ed Lee by the Johnston County Country Club, Inc., by deed dated April 15, 1939, and recorded in the Registry of Johnston County.

FIFTH TRACT: BEGINNING at a stake on Lee's Branch, Johnston County Country Club, Inc., and R. Ed Lee's corner and runs as

Lee's line North 80 degrees 45 minutes East 151 feet to a stake; thence South 13 degrees 30 minutes East 194 feet to a stake; thence South 45 degrees 30 minutes East 180 feet to a stake; thence South 3 1/2 East 116 feet to a stake on Lee's Branch; thence up the branch to the BEGINNING, containing two (2) acres, more or less.

SIXTH TRACT: BEGINNING at an iron stake on North side of Holt Lake approximately 1000 feet North of the Country Club Pro Shop in the line between the lands purchased by The Country Club of Johnston County, Inc., from Nat Rand and Ralph Johnson it also being a corner of the lands purchased by D. W. Parrish from Ralph Johnson and the line runs as a new line with the Country Club of Johnston County, Inc., South 37 degrees and 25 minutes East 140 feet to an iron stake a new corner; thence South 18 degrees 30 minutes West 140 feet to a stake in the highwater mark of Holt Lake; thence as the highwater mark of Holt Lake in a westerly direction to a stake in the highwater mark of said pond, it being the original corner between the lands formerly owned by Nat Rand and the lands owned by Ralph Johnson now D. W. Parrish and the line runs as a dividing line between the above-mentioned property North 6 degrees and 15 minutes East 240 feet to the BEGINNING and being a portion of Nat Rand property purchased by the Country Club of Johnston County, Inc.

SEVENTH TRACT: BEGINNING at an iron stake on the North side of Holt Lake approximately 1000 feet North of the Country Club Pro Shop, a corner in the line of the property purchased by The Country Club of Johnston County, Inc., from Nat Rand and Ralph Johnson; it being a corner of the land purchased by D. W. Parrish from Ralph Johnson and the line runs North 37 degrees and 25 minutes West 170 feet to a stake; thence North 43 degrees and 55 minutes West 199 feet to an iron stake a new corner with D. W. Parrish in the line of The Country Club of Johnston County, Inc., (Johnson Land); thence as its line South 70 degrees and 45 minutes East 104.5 feet to a stake and South 30 degrees and 45 minutes East 281 feet to the BEGINNING and being a portion of the land purchased by D. W. Parrish from Ralph Johnson and wife.

THERE IS EXCEPTED FROM THE ABOVE-DESCRIBED PROPERTY a lot conveyed to Willie Edward Lee by deed from Country Club of Johnston County, Inc., in Book 630, page 75, Johnston County Registry. LESS AND EXCEPT a lot conveyed to H. M. McCormick and wife, recorded in Book 711, page 334, Johnston County Registry.

THERE IS ALSO LESS AND EXCEPTED FROM THE ABOVE-DESCRIBED PROPERTY OF THE COUNTRY CLUB OF JOHNSTON COUNTY THE FOLLOWING LOTS:

Lot 1 as recorded in Book 881, page 148;
Lot 2 as recorded in Book 881, page 334;
Lot 3 as recorded in Book 882, page 622;
Lot 5 as recorded in Book 881, page 278;
Lot 6 as recorded in Book 881, page 479;
Lot 7 as recorded in Book 881, page 246;
Lot 8 as recorded in Book 881, page 557;
Lot 9 as recorded in Book 881, page 288;
Lot 10 as recorded in Book 881, page 242;
Lot 11 as recorded in Book 881, page 244;
Lot 12 as recorded in Book 881, page 342;
Lot 13 as recorded in Book 881, page 681;
Lot 14 as recorded in Book 881, page 679;
Lot 15 as recorded in Book 881, page 481;
Lot 16 as recorded in Book 881, page 584;
Lot 17 as recorded in Book 881, page 336;
Lot 18 as recorded in Book 882, page 179;
and Lot 19 as recorded in Book 881, page 433.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 549 **CHAPTER 324**

AN ACT AMENDING ORANGE COUNTY'S AUTHORITY RELATING TO IMPACT FEES.

The General Assembly of North Carolina enacts:

Section 1. Section 17.1 of Chapter 460 of the 1987 Session Laws reads as rewritten:

"Sec. 17.1. Section 17 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County. Provided, however, any portion of an Orange County ordinance that contains a system of impact fees to provide for capital improvements to public schools within Orange County, applies everywhere in Orange County, including within the corporate limits and the extraterritorial planning jurisdiction of any city, town, or municipal corporation within Orange County."

Sec. 2. Section 18.1 of Chapter 460 of the 1987 Session Laws reads as rewritten:

"Sec. 18.1. Section 18 of this act shall apply only to Orange County, and applies only within the planning jurisdiction of Orange County. Provided, however, any portion of an Orange County ordinance that contains a system of impact fees to provide for capital

improvements to public schools within Orange County, applies everywhere in Orange County, including within the corporate limits and the extraterritorial planning jurisdiction of any city, town, or municipal corporation within Orange County."

Sec. 3. This act is effective upon ratification and applies only to Orange County.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 550 **CHAPTER 325**

AN ACT TO AUTHORIZE CERTAIN SCHOOL DISTRICT BONDS AND TAXES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-512 reads as rewritten:

"*§ 115C-512. Expansion of existing supplemental school tax area pursuant to merger of school administrative units in certain counties.*

(a) This section ~~shall apply to counties~~ applies to:

(1) Counties that have three school administrative units located entirely within the county, only one of which units has a supplemental school tax in effect that is levied exclusively by the elected school board of the administrative unit.

(2) Counties that have three school administrative units, two of which are entirely within the county and one of which is located in more than one county.

(b) If a school administrative unit in a county to which this section applies merges with another school administrative unit in the county, and one of the merging units has previously voted a supplemental school tax that is in effect prior to and at the time of the merger, then the geographic area subject to the supplemental school tax in effect prior to the merger shall be expanded to include the entire geographic area encompassed by the new school administrative unit resulting from the merger. The levy and collection of and the expenditure of revenues from the tax shall be expanded as herein provided without approval of the voters of the geographic area directly affected by the merger, and shall be used for purposes provided in G.S. 115C-501(a).

(b1) If legislation is enacted providing for the merger of two school administrative units located entirely within a county described in subdivision (a)(2), and one of the merging units has previously voted a supplemental school tax that is in effect, then from July 1, 1991, and for two years following the effective date of the merger, the board of commissioners of the county in which the units are located may create a special tax district pursuant to this Article consisting of one of the

merging units and may levy a supplemental school tax in that district at a rate that is different from the rate levied in the remainder of the merged unit. The tax levied in the special district may be levied without approval of the voters of the district but may not exceed the amount of the supplemental school tax previously voted in one of the merged units. The supplemental school tax levied pursuant to this subsection may be used for any purpose for which a board of education may budget funds under Article 31 of Chapter 115C of the General Statutes.

(c) Notwithstanding levying authority in existence prior to the merger, the board of county commissioners shall, upon merger of the administrative units, have the exclusive authority to levy the supplemental tax expanded in accordance with this section, provided that the tax shall be levied at a rate not to exceed the rate of the supplemental school tax in effect prior to the merger of the school administrative units."

Sec. 2. G.S. 115C-501 is amended by adding a new subsection to read:

"(i) To Vote School Bonds and Taxes in Certain Merged School Administrative Units. -- Elections for the purpose of authorizing the levy of certain taxes and the issuance of bonds shall be called by a merged school administrative unit described in G.S. 115C-513 with the consent of the boards of county commissioners of both counties in which the merged unit is located. The election shall be conducted and the results canvassed by the boards of elections of both counties. The boards of elections shall certify the results of the election to the board of education of the merged school administrative unit. The board of education shall certify and declare the result of the election, which shall be determined on an aggregate basis from the results certified by the boards of elections. The board of education shall publish a statement of the result once as provided in the Local Government Bond Act, Article 4 of Chapter 159 of the General Statutes."

Sec. 3. Article 36 of Chapter 115C of the General Statutes is amended by adding a new section to read:

"*§ 115C-513. Special tax for certain merged school administrative units.*

(a) Scope. This section applies to a merged school administrative unit that consists of one entire county and part of a second county and is composed of two merging units, one of which is located within one county and one of which is located partly in the same county as the first unit and partly in a second county. A merged school administrative unit to which this section applies may levy taxes as provided in this section to be applied to the payment of notes, bonds, or refunding bonds issued to finance capital costs of school facilities as described in G.S. 159-48.

(b) Issuance of Bonds. The board of education of a merged school administrative unit may issue notes, bonds, or refunding bonds at one time or from time to time to pay the capital costs of school facilities as described in G.S. 159-48. The bonds shall be issued and maintained in accordance with the provisions of Articles 1, 4, 5A, 7, 9, 10, and 11 of Chapter 159 of the General Statutes, except as modified by this section.

The board of education of a merged school administrative unit shall call for a referendum authorizing the issuance of notes, bonds, and refunding bonds and the levy of a tax to pay amounts relating to these notes, bonds, or refunding bonds. The referendum may be called only with the consent of the boards of commissioners of both counties in which the merged school administrative unit is located. The referendum shall be held in the merged school administrative unit and only those qualified voters who reside in the unit may vote. The board of commissioners of each county shall have the referendum conducted by the board of elections of its county.

After issuance of the approved bonds, the merged school administrative unit shall make timely payments of principal and interest on the bonds after receipt of notification of its debt service obligation pursuant to G.S. 159-35. The provisions of G.S. 159-36 govern a failure by the merged school administrative unit to levy taxes or otherwise provide for payment of the debt.

Bonds, notes, and refunding bonds issued under this section and their transfer (including any profit made on the sale thereof) shall be exempt from all State, county, and municipal taxation and assessment, direct or indirect, general or special, whether imposed for the purpose of general revenue or otherwise, excluding inheritance and gift taxes. The interest on bonds, notes, and refunding bonds is not subject to taxation as to income. The bonds, notes, and refunding bonds are not subject to taxation when they constitute a part of the surplus of a bank, trust company, or other corporation.

Article 9 of the North Carolina Uniform Commercial Code, Chapter 25 of the General Statutes, does not apply to any security interest created in connection with the issuance of bonds under this section.

(c) Tax. If a majority of the qualified voters of a merged school administrative unit voting on the question approve the issuance of bonds and levy of a tax as provided in this section, the board of education of the merged school administrative unit may levy a tax on all property having a situs in the merged school administrative unit for the purpose of retiring bonds issued by the unit under this section. Taxes levied pursuant to this section may be levied prior to the issuance of notes or bonds. The authority of a merged school administrative unit to levy a tax pursuant to this section terminates

after all of the related notes, bonds, and refunding bonds are discharged or paid.

Before April 15 of each year, the tax assessor of each county in which the merged school administrative unit is located shall certify to the superintendent of schools an estimate of the total assessed value of property in the county subject to taxation on behalf of the merged school administrative unit pursuant to this Article. The board of education of the merged school administrative unit, in the budget it submits to each board of county commissioners, shall set the rate of ad valorem tax it levies as a tax under this section. The levy under this section shall be at the rate necessary to provide for payment of interest on and principal of outstanding notes, bonds, and refunding bonds issued by the merged school administrative unit.

Each county in which the merged school administrative unit is located shall compute and collect this tax in the same manner that county taxes are collected. The tax shall be shown separately on the tax receipts for the fiscal year. Collections shall be remitted to the merged school administrative unit within 10 days after the close of each calendar month. Partial payments shall be proportionally divided between the county collecting the tax and the merged school administrative unit. The board of commissioners of each county collecting the tax levied under this section may, in its discretion, deduct from the proceeds of the tax the actual additional cost to the county of computing, billing, and collecting the tax."

Sec. 4. G.S. 159-44(4) reads as rewritten:

"(4) 'Unit,' 'unit of local government,' or 'local government' means counties; cities, towns, and incorporated villages; sanitary districts; mosquito control districts; hospital districts; merged school administrative units described in G.S. 115C-513; metropolitan sewerage districts; metropolitan water districts; county water and sewer districts; regional public transportation authorities; and special airport districts."

Sec. 5. G.S. 159-48(e) reads as rewritten:

"(e) Each sanitary district, mosquito control district, hospital district, merged school administrative unit described in G.S. 115C-513; metropolitan sewerage district, metropolitan water district, county water and sewer district, regional public transportation authority and special airport district is authorized to borrow money and issue its bonds under this Article in evidence thereof for the purpose of paying any capital costs of any one or more of the purposes for which it is authorized, by general laws uniformly applicable throughout the State, to raise or appropriate money, except for current expenses."

Sec. 6. G.S. 159-51 reads as rewritten:

"§ *159-51. Application to Commission for approval of bond issue; preliminary conference; acceptance of application.*

No bonds may be issued under this Article unless the issue is approved by the Local Government Commission. The governing board of the issuing unit shall file an application for Commission approval of the issue with the secretary of the Commission. If the issuing unit is a regional public transportation authority, the application must be accompanied by a resolution of the special tax board of that authority approving of the application. The application shall state such facts and have attached to it such documents concerning the proposed bonds and the financial condition of the issuing unit as the secretary may require. The Commission may prescribe the form of the application.

Before he accepts the application, the secretary may require the governing board or its representatives to attend a preliminary conference to consider the proposed bond issue. If the issuing unit is a merged school administrative unit described in G.S. 115C-513, each county in which the merged unit is located may attend the preliminary conference.

After an application in proper form has been filed, and after a preliminary conference if one is required, the secretary shall notify the unit in writing that the application has been filed and accepted for submission to the Commission. The secretary's statement shall be conclusive evidence that the unit has complied with this section."

Sec. 7. G.S. 105-213(a) reads as rewritten:

"(a) There is annually appropriated from the General Fund to counties and municipalities the amount of revenue collected under this Article during the preceding fiscal year, plus an amount equal to forty percent (40%) of the tax collected on accounts receivable during the preceding fiscal year and less an amount equal to the costs during the preceding fiscal year of:

(1) Refunds made during the fiscal year of taxes levied under this Article.
(2) The Department of Revenue to collect and administer the taxes levied under this Article.
(3) The Department of Revenue in performing the duties imposed by Article 15 of this Chapter.
(4) The Property Tax Commission.
(5) The Institute of Government in operating a training program in property tax appraisal and assessment.

The appropriation shall be distributed by August 30 of each year. The appropriation shall be included in the Current Operations Appropriations Act.

To distribute the appropriation, the Secretary of Revenue shall keep a separate record by counties of the taxes collected under this Article

and shall certify to the State Controller and to the State Treasurer the amount to be distributed to each county and municipality in the State. The State Controller shall then issue a warrant on the State Treasurer to each county and municipality in the amount certified.

The Secretary shall allocate the amount appropriated under this Article to the counties according to the county in which the taxes were collected. The Secretary shall then increase the amount allocable to each county by a sum equal to forty percent (40%) of the amount of tax on accounts receivable allocated to the county on the basis of collections. The amounts so allocated to each county shall in turn be divided between the county and the municipalities in the county in proportion to the total amount of ad valorem taxes levied by each during the fiscal year preceding the distribution. In dividing these amounts between each county and its municipalities, the Secretary shall treat taxes levied by a merged school administrative unit described in G.S. 115C-513 in a part of the unit located in a county as taxes levied by the county in which that part is located. For the purpose of computing the distribution of the intangibles tax to any county and the municipalities located in the county for any year with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and municipalities therein, the Department shall use the last property valuation of such public service company which has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein.

The chairman of each board of county commissioners and the mayor of each municipality shall report to the Secretary of Revenue information requested by the Secretary to enable the Secretary to distribute the amount appropriated by this section. If a county or municipality fails to make a requested report within the time allowed, the Secretary may disregard the county or municipality in distributing the amount appropriated by this section. The amount distributed to each county and municipality shall be used by the county or municipality in proportion to property tax levies made by it for the various funds and activities of the county or municipality, unless the county or municipality has pledged the amount to be distributed to it under this section in payment of a loan agreement with the North Carolina Solid Waste Management Capital Projects Financing Agency. A county or municipality that has pledged amounts distributed under this section in payment of a loan agreement with the Agency may apply the amount the loan agreement requires."

Sec. 8. G.S. 105-472(2) reads as rewritten:

"(2) The net proceeds of the tax collected in a taxing county shall be divided between the county and the municipalities therein in proportion to the total amount of ad valorem taxes levied by each on property having a tax situs in the taxing county during the fiscal year next preceding such distribution. For purposes of this section, the amount of the ad valorem taxes levied by such county or municipality shall include any ad valorem taxes levied by such county or municipality in behalf of a taxing district or districts and collected by the county or municipality. In addition, the amount of taxes levied by a county shall include any ad valorem taxes levied by a merged school administrative unit described in G.S. 115C-513 in the part of the unit located in the county. In computing the amount of tax proceeds to be distributed to any county or municipality, the amount of any ad valorem taxes levied but not substantially collected shall be ignored. Each county and municipality receiving a distributable share of the sales and use tax levied under this Article shall in turn immediately share the proceeds with any district or districts in behalf of which the county or municipality levied ad valorem taxes in the proportion that the district levy bears to the total levy of the county or municipality. Any county or municipality which fails to provide the Department of Revenue with information concerning ad valorem taxes levied by that county or municipality adequate to permit a timely determination of the appropriate share of that county or municipality of tax proceeds collected under this Article may be excluded by the Secretary from each quarterly distribution with respect to which such information was not provided in a timely manner, and such tax proceeds shall then be distributed only to the governmental unit or units whose information was provided in a timely manner. For the purpose of computing the distribution of the tax under this subsection to any county and the municipalities located therein for any quarter with respect to which the property valuation of a public service company is the subject of an appeal pursuant to the provisions of the Machinery Act, or to applicable provisions of federal law, and the Department of Revenue is restrained by operation of law or by a court of competent jurisdiction from certifying such valuation to the county and the municipalities therein, the Department shall use the last property valuation of such public service company which

has been so certified in order to determine the ad valorem tax levies applicable to such public service company in the county and the municipalities therein."

Sec. 9. Interpretation of Act.

(a) Additional method. The foregoing sections of this act shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded as in derogation of any powers now existing.

(b) Statutory references. References in this act to specific sections or Chapters of the General Statutes are intended to be references to such sections as they may be amended from time to time by the General Assembly.

(c) Liberal construction. This act, being necessary for the health and welfare of the people of the State, shall be liberally construed to effect these purposes.

(d) Inconsistent provisions. Insofar as the provisions of this act are inconsistent with the provisions of any general laws, this act shall be controlling.

(e) Severability. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 744 **CHAPTER 326**

AN ACT TO PROVIDE FOR THE EXPUNCTION OF THE RECORD OF A DEFENDANT NOT PREVIOUSLY CONVICTED OF A FELONY WHEN CRIMINAL CHARGES AGAINST THE DEFENDANT ARE DISMISSED OR THERE IS A FINDING OF NOT GUILTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-146(a) reads as rewritten:

"(a) If any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not

previously received an expungement and that the person had not previously been convicted of any felony ~~or misdemeanor other than a traffic violation~~ under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 33 **CHAPTER 327**

AN ACT TO REGULATE THE BUSINESS OF PROVIDING CREDIT REPAIR SERVICES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 30.

"Credit Repair Services Act.

"§ *66-220. Short title and purpose.*

(a) This act shall be known and may be cited as the Credit Repair Services Act.

(b) The General Assembly recognizes that many of its citizens rely heavily on favorable credit ratings in order to obtain goods and services, and that some of these citizens are unable to secure credit because of unfavorable credit histories. The General Assembly further recognizes that consumers sometimes need assistance in obtaining credit or in correcting erroneous credit histories, and that this need has given rise to the establishment of businesses organized for the purpose of providing credit repair services. The purpose of this act is to ensure that businesses offering credit repair services are providing these services in a manner that is fair and reasonable to the consuming public.

"§ *66-221. Definitions.*

As used in this Article, unless the context requires otherwise:

(1) 'Credit repair business' means any person who, with respect to the extension of credit by others, sells, provides, or performs, or represents that such person can or will sell, provide, or perform any of the following services in return for the payment of money or other valuable consideration:

a. Improving, repairing, or correcting a consumer's credit record, history, or rating;
b. Obtaining revolving charge card credit or retail installment credit;
c. Providing advice or assistance to a consumer with regard to either sub-subdivision a. or b. above.

(2) 'Credit repair business' does not include:
a. Any bank, credit union, or savings institution organized and chartered under the laws of this State or the United States, or any consumer finance lender licensed pursuant to Article 15 of Chapter 53 of the General Statutes;
b. Any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3));
c. Any person licensed as a real estate broker or real estate salesman by this State where the person is acting within the course and scope of the license;
d. Any person licensed to practice law in this State where the person renders services within the course and scope of that person's practice as a lawyer;
e. Any broker-dealer registered with the Securities and Exchange Commission or the Commodities Future Trading Commission where the broker-dealer is acting within the course and scope of that regulation; or
f. Any consumer reporting agency as defined in the Federal Fair Credit Reporting Act.

(3) 'Consumer' means any individual who is solicited to purchase or who purchases the services of a credit repair business.

"§ 66-222. *Bond or trust account required.*

Every credit repair business shall obtain a surety bond issued by a surety company authorized to do business in this State, or shall establish a trust account with a licensed and insured bank or savings institution located in the State of North Carolina. The amount of the bond or trust account shall be ten thousand dollars ($10,000). The bond or trust account shall be in favor of the State of North Carolina. Any person damaged by the credit repair business' breach of contract or of any obligation arising therefrom, or by any violation of this Article, may bring an action against the bond or trust account to recover damages suffered. The aggregate liability of the surety or trustee shall be only for actual damages and in no event shall exceed the amount of the bond or trust account.

"§ 66-223. *Prohibited acts.*

A credit repair business and its salespersons, agents, and representatives, and independent contractors who sell or attempt to sell the services of a credit repair business, shall not do any of the following:

(1) Charge or receive any money or other valuable consideration prior to full and complete performance of the services that the credit repair business has agreed to perform for or on behalf of the consumer;

(2) Charge or receive any money or other valuable consideration solely for referral of the consumer to a retail seller or to any other credit grantor who will or may extend credit to the consumer, if the credit that is or will be extended to the consumer is upon substantially the same terms as those available to the general public;

(3) Represent that it can directly or indirectly arrange for the removal of derogatory credit information from the consumer's credit report or otherwise improve the consumer's credit report or credit standing, provided, this shall not prevent truthful, unexaggerated statements about the consumer's rights under existing law regarding his credit history or regarding access to his credit file;

(4) Make, or counsel or advise any consumer to make, any statement that is untrue or misleading and which is known or which by the exercise of reasonable care should be known, to be untrue or misleading, to a consumer reporting agency or to any person who has extended credit to a consumer or to whom a consumer is applying for an extension of credit, with respect to a consumer's creditworthiness, credit standing, or credit capacity; or

(5) Make or use any untrue or misleading representations in the offer or sale of the services of a credit repair business or engage, directly or indirectly, in any act, practice, or course of business which operates or would operate as a fraud or deception upon any person in connection with the offer or sale of the services of a credit repair business.

"§ *66-224. Contractual requirements.*

(a) Effective October 1, 1991, every contract between a consumer and a credit repair business for the purchase of the services of the credit repair business shall be in writing, dated, signed by the consumer, and shall include the following:

(1) A conspicuous statement in size equal to at least 10-point boldface type, in immediate proximity to the space reserved for the signature of the consumer, as follows:

'YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THE TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT.'

(2) The terms and conditions of payment, including the total of all payments to be made by the consumer, whether to the credit repair business or to some other person;

(3) A complete and detailed description of the services to be performed and the results to be achieved by the credit repair business for or on behalf of the consumer, including all guarantees and all promises of full or partial refunds and a list of the adverse information appearing on the consumer's credit report that the credit repair business expects to have modified;

(4) The principal business address of the credit repair business and the name and address of its agent in this State authorized to receive service of process; and

(5) One of the following statements, as appropriate, in substantially the following form:

a. 'As required by North Carolina law, this credit repair business has secured a bond by .....(name and address of surety company), a surety authorized to do business in this State. Before signing a contract with this business, you should check with the surety company to determine the bond's current status.', or

b. 'As required by North Carolina law, this credit repair business has established an escrow account ..... (number) with ..... (name and address of bank or savings institution). Before signing a contract with this business, you should check with the bank or savings institution to determine the current status of the account.'

(b) The contract shall be accompanied by a completed form in duplicate, captioned 'NOTICE OF CANCELLATION', which shall be attached to the contract and easily detachable, and which shall contain in an least 10-point boldface type the following statement:

'NOTICE OF CANCELLATION

YOU MAY CANCEL THIS CONTRACT, WITHOUT ANY PENALTY OR OBLIGATION, AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE THE CONTRACT IS SIGNED.

IF YOU CANCEL, ANY PAYMENT MADE BY YOU UNDER THIS CONTRACT WILL BE RETURNED WITHIN 10 DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE.

TO CANCEL THIS CONTRACT, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE, OR ANY OTHER WRITTEN NOTICE, TO

..... (Name of Seller)

AT ..... (Address of Seller)

..... (Place of Business) NOT LATER THAN MIDNIGHT.....(Date).

I HEREBY CANCEL THIS TRANSACTION.

.....

Date Buyer's Signature'.

A copy of the fully completed contract and all other documents the credit repair business requires the consumer to sign shall be given by the credit repair business to the consumer at the time they are signed.

"§ 66-225. *Violations.*

(a) If a credit repair business uses any untrue or misleading statements in connection with a credit repair contract, fails to fully comply with the requirements of this Article, or fails to comply with the terms of the contract or any obligation arising therefrom, then, upon written notice to the credit repair business, the consumer may void the contract, and shall be entitled to receive from the credit repair business all sums paid to the credit repair business, and recover any additional damages including reasonable attorneys' fees.

(b) Any waiver by a consumer of any of the provisions of this Article shall be deemed void and unenforceable by a credit repair business.

(c) Upon complaint of any person that a credit repair business has violated the provisions of this Article, the superior court shall have jurisdiction to enjoin that defendant from further such violations.

(d) In a proceeding involving this Article, the burden of proving an exemption or an exception from the definition of a credit repair business shall be borne by the person claiming the exemption or exception.

(e) The remedies provided herein shall be in addition to any other remedies provided for by law or in equity.

(f) The violation of any provision of this Article shall constitute an unfair trade practice under G.S. 75-1.1 and the violation of any provision of this Article shall constitute a Class J felony.

"§ 66-226. *Scope.*

The provisions of this Article shall apply in all circumstances in which any party to the contract conducted any contractual activity, including but not limited to solicitation, discussion, negotiation, offer, acceptance, signing, or performance in this State."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 333 **CHAPTER 328**

AN ACT TO AUTHORIZE THE STATE BOARD OF EDUCATION TO ADOPT RULES REGARDING THE DISPOSITION OF OLD TEXTBOOKS AND OTHER INSTRUCTIONAL MATERIAL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-102 reads as rewritten:

"§ *115C-102. Right to ~~purchase.~~ purchase; disposal of textbooks and materials.*

(a) Any parent, guardian, or person in loco parentis may purchase any instructional material needed for any child in the public schools of the State from the board of education of the local school administrative unit in which the child is enrolled or, in the case of basic textbooks, from the State Board of Education.

(b) Notwithstanding Article 3A of Chapter 143 of the General Statutes, G.S. 143-49(4), or any other provision of law, the State Board of Education may adopt rules authorizing local boards of education to dispose of discontinued instructional material, including State-adopted textbooks."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 381 **CHAPTER 329**

AN ACT TO COMPLY WITH CONGRESSIONAL CHANGES IN OSHA.

Whereas, States are required by Section 18 of the Occupational Safety and Health Act to implement changes in their State OSHA programs corresponding to Congressional changes that will keep State programs as effective as the federal OSHA program; and

Whereas, Congress on November 5, 1990, passed the Omnibus Budget Reconciliation Act of 1990 which amended Section 17 of the

Occupational Safety and Health Act to increase penalties for violations of the Act; and

Whereas, the United States Department of Labor has notified the North Carolina Department of Labor that North Carolina must match these statutory changes within six months; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-138(a) reads as rewritten:

"(a) Any employer who willfully or repeatedly violates the requirements of this Article, any standard, rule or order promulgated pursuant to this Article, or regulations prescribed pursuant to this Article, may upon the recommendation of the Director to the Commissioner be assessed by the Commissioner a civil penalty of not more than ~~fourteen thousand dollars ($14,000)~~ seventy thousand dollars ($70,000) and not less than five thousand ($5,000) for each willful violation. Any employer who has received a citation for a serious violation of the requirements of this Article or any standard, rule, or order promulgated under this Article or of any regulation prescribed pursuant to this Article, shall be assessed by the Commissioner a civil penalty of up to ~~two thousand five hundred dollars ($2,500)~~ seven thousand dollars ($7,000) for each such violation. If the violation is adjudged not to be of a serious nature, then the employer may be assessed a civil penalty of up to ~~one thousand five hundred dollars ($1,500)~~ seven thousand dollars ($7,000) for each such violation. Any employer who fails to correct a violation for which a citation has been issued under this Article within the period allowed for its correction (which period shall not begin to run until the date of the final order of the Board in the case of any appeal proceedings in this Article initiated by the employer in good faith and not solely for the delay or avoidance of penalties), may be assessed a civil penalty of not more than ~~one thousand dollars ($1,000).~~ seven thousand dollars ($7,000). Such assessment shall be made to apply to each day during which such failure or violation continues. Any employer who violates any of the posting requirements, as prescribed under the provision of this Article, shall be assessed a civil penalty of not more than ~~one thousand dollars ($1,000)~~ seven thousand dollars ($7,000) for such violation. The Commissioner upon recommendation of the Director, or the Board in case of an appeal, shall have authority to assess all civil penalties provided by this Article, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer and the record of previous violations."

Sec. 2. This act becomes effective January 1, 1992 and applies to violations committed on or after that date.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 453 **CHAPTER 330**

AN ACT TO MAKE CLARIFYING CHANGES TO THE WAGE AND HOUR ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.2 reads as rewritten:

"*§ 95-25.2. Definitions.*

In this Article, unless the context otherwise requires:

(1) 'Agriculture' includes farming in all its branches performed by a farmer or on a farm as an incident to or in conjunction with farming operations.

(2) 'Commissioner' means the Commissioner of Labor.

(3) 'Employ' means to suffer or permit to work.

(4) 'Employee' includes any individual employed by an employer.

(5) 'Employer' includes any person acting directly or indirectly in the interest of an employer in relation to an employee.

(6) 'Establishment' means a physical location where business is conducted.

(7) 'The Fair Labor Standards Act' means the Fair Labor Standards Act of 1938, as amended and as the same may be amended from time to time by the United States Congress.

(8) 'Hours worked' includes all time an employee is employed.

(9) 'Payday' means that day designated for payment of wages due by virtue of the employment relationship.

(10) ~~'Pay period' means a period of seven or 14 calendar days, or a calendar month.~~ 'Pay periods' may be daily, weekly, biweekly, semimonthly, or monthly.

(11) 'Person' means an individual, partnership, association, corporation, business trust, legal representative, or any organized group of persons. For the purposes of G.S. 95-25.2, G.S. 95-25.3, G.S. 95-25.14, and G.S. 95-25.20, it also means the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government. The Government of the United States and any agency of the United States (including the United States Postal Service and Postal Rate

Commission) are not included as persons for any purpose under this Article.

(12) 'Seasonal food service establishment' means a restaurant, food and drink stand or other establishment generally recognized as a commercial food service establishment, preparing and serving food to the public but operating 180 days or less per year.

(13) 'Seasonal religious or nonprofit educational conference center or a seasonal amusement or recreational establishment' means an establishment which does not operate for more than seven months in any calendar year, or during the preceding calendar year had average receipts for any six months of such year of not more than thirty-three and one-third percent (33 1/3%) of its average receipts for the other six months of that year.

(14) 'Tipped employee' means any employee who customarily receives more than twenty dollars ($20.00) a month in tips.

(15) 'Tip' shall mean any money or part thereof over and above the actual amount due a business for goods, food, drink, services or articles sold which is paid in cash or by credit card, or is given to or left for an employee by a patron or patrons of the business where the employee is employed.

(16) 'Wage' paid to an employee means compensation for labor or services rendered by an employee whether determined on a time, task, piece, job, day, commission, or other basis of calculation, and the reasonable cost as determined by the Commissioner of furnishing employees with board, lodging, or other facilities. For the purposes of G.S. 95-25.6 through ~~G.S. 95-25.12,~~ G.S. 95-25.13 'wage' includes sick pay, vacation pay, severance pay, commissions, bonuses, and other amounts promised when the employer has a policy or a practice of making such payments.

(17) 'Workweek' means any period of 168 consecutive hours.

(18) 'Enterprise' means the related activities performed either through unified operations or common control by any person or persons for a common business purpose and includes all such activities whether performed in one or more establishments or by one or more corporate units but shall not include the related activities performed for such enterprise by an independent contractor or franchisee."

Sec. 2. G.S. 95-25.4 reads as rewritten:

"*§ 95-25.4. Overtime.*

(a) Every employer shall pay each employee who works longer than 45 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of 45 per week.

~~(b) Hospital and nursing home employers may elect to pay overtime after eight hours per day or 80 hours in a 14-day work period, if the employee is notified in advance and is paid not less than one and one-half times the regular rate of pay of the employee for those hours in excess of eight per day or 80 in such 14-day work period.~~"

Sec. 3. G.S. 95-25.14 reads as rewritten:

"*§ 95-25.14. Exemptions.*

(a) The provisions of G.S. 95-25.3 (Minimum Wage), G.S. 95-25.4 (Overtime), and G.S. 95-25.5 (Youth Employment), and the provisions of G.S. 95-25.15(b) ~~(Record Keeping)~~ (Record Keeping) as ~~it relates~~ they relate to these ~~exemptions~~ exemptions, do not apply to:

(1) Any person ~~or establishment required to comply with or subject to the regulation of wages, overtime, child labor and related record keeping under~~ employed in an enterprise engaged in commerce or in the production of goods for commerce as defined in the Fair Labor Standards ~~Act, except:~~ Act:

a. Except ~~As~~ as otherwise specifically provided in ~~G.S. 95-25.5; and;~~ G.S. 95-25.5.

b. ~~That~~ Notwithstanding the above, any employee other than a learner, ~~apprentice~~ apprentice, student, or handicapped worker as defined in the Fair Labor Standards Act who is not otherwise exempt under the other provisions of this section, and for whom the applicable minimum wage under the Fair Labor Standards Act is less than the minimum wage provided in G.S. 95-25.3, is not exempt from the provisions of G.S. 95-25.3 or G.S. 95-25.4;

(2) Any person employed in agriculture, as defined under the Fair Labor Standards Act;

(3) Any person employed as a domestic, including baby sitters and companions, as defined under the Fair Labor Standards Act;

(4) Any person employed as a page in the North Carolina General Assembly or in the Governor's Office;

(5) Bona fide volunteers in medical, educational, religious, or nonprofit organizations where an employer-employee relationship does not exist;

(6) Persons confined in and working for any penal, correctional or mental institution of the State or local government;

(7) Any person employed as a model, or as an actor or performer in motion pictures or theatrical, radio or television productions, as defined under the Fair Labor Standards Act, except as otherwise specifically provided in G.S. 95-25.5;

(8) Any person employed by an outdoor drama in a production role, including lighting, costumes, properties and special effects, except as otherwise specifically provided in G.S. 95-25.5; but this exemption does not include such positions as office workers, ticket takers, ushers and parking lot attendants.

(b) The provisions of G.S. 95-25.3 ~~(Minimum Wage),~~ (Minimum Wage) and G.S. 95-25.4 (Overtime), and the provisions of G.S. 95-25.15(b) ~~(Record Keeping) as it relates~~ (Record Keeping) as they relate to these ~~exemptions~~ exemptions, do not apply to:

(1) Any employee of a boys' or girls' summer camp or of a seasonal religious or nonprofit educational conference center;

(2) Any person employed in the catching, processing or first sale of seafood, as defined under the Fair Labor Standards Act;

(3) The spouse, child, or parent of the employer or any person qualifying as a dependent of the employer under the income tax laws of North Carolina;

(4) Any person employed in a bona fide executive, administrative, professional or outside sales capacity, as defined under the Fair Labor Standards Act;

(5) Repealed by Session Laws 1989, c. 687, s. 2.

(6) Any person while participating in a ridesharing arrangement as defined in G.S. 136-44.21.

(c) The provisions of G.S. 95-25.4 ~~(Overtime)~~ (Overtime), and the provisions of G.S. 95-25.15(b) (Record Keeping) as ~~it relates~~ they relate to this ~~exemption~~ exemption, do not apply to:

(1) Drivers, drivers' helpers, loaders and mechanics, as defined under the Fair Labor Standards Act;

(2) Taxicab drivers;

(3) Seamen, employees of railroads, and employees of air carriers, as defined under the Fair Labor Standards Act;

(4) Salespersons, mechanics and partsmen employed by automotive, truck, and farm implement dealers, as defined under the Fair Labor Standards Act;

(5) Salespersons employed by trailer, boat, and aircraft dealers, as defined under the Fair Labor Standards Act;

(6) Live-in child care workers or other live-in employees in homes for dependent children;

(7) Radio and television announcers, news editors, and chief engineers, as defined under the Fair Labor Standards Act.

(d) The provisions of this Article do not apply to the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, except for the following provisions, which do apply:

(1) The minimum wage provisions of G.S. 95-25.3;

(2) The definition provisions of G.S. 95-25.2 necessary to interpret the applicable provisions;

(3) The exemptions of subsections (a) and (b) of this section;

(4) The complainant protection provisions of G.S. 95-25.20.

(e) Employment in a seasonal recreation program by the State of North Carolina, any city, town, county, or municipality, or any State or local agency or instrumentality of government, is exempt from all provisions of this Article, including G.S. 95-25.3 (Minimum Wage)."

Sec. 4. G.S. 95-25.24 reads as rewritten:

"§ *95-25.24. Restraint of violations.*

The General Court of Justice has jurisdiction and authority upon application of the Commissioner to enjoin or restrain violations of this ~~Article.~~ Article, including the restraint of any withholding of payment of unpaid wages, minimum wages, or overtime compensation found by the court to be due to employees under this Article (except sums which employees are barred from recovering, at the time of the commencement of the action to restrain the violations, by virtue of the applicable statute of limitations)."

Sec. 5. G.S. 95-25.3(f) reads as rewritten:

"(f) Tips earned by a tipped employee may be counted as wages only up to fifty percent (50%) of the applicable minimum wage for each hour worked if the tipped employee is notified in advance, is permitted to retain all tips and the employer maintains accurate and complete records of tips received by each employee as such tips are certified by the employee monthly or for each pay period. Even if the employee refuses to certify tips accurately, tips may still be counted as wages when the employer complies with the other requirements of this section and can demonstrate by monitoring tips that the employee regularly receives tips in the amount for which the credit is taken. Tip pooling shall also be permissible among employees who customarily and regularly receive tips; however, no employee's tips may be reduced by more than fifteen percent (15%) under a tip pooling arrangement."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 495 **CHAPTER 331**

AN ACT REGARDING THE DEVELOPMENT OF DUAL PERSONNEL EVALUATION PROCESSES FOR THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-238.2(b) reads as rewritten:

"(b) Local school administrative units that participate in the Performance-based Accountability Program:

(1) Are exempt from State requirements to submit reports and plans, other than local school improvement plans, to the Department of Public Education; they are not exempt from federal requirements to submit reports and plans to the Department.

(2) Are subject to the performance standards but not the opportunity standards or the staffing ratios of the State Accreditation Program. The performance standards in the State Accreditation Program, modified to reflect the results of end-of-course and end-of-grade tests, may serve as the basis for developing the student performance indicators adopted by the State Board of Education pursuant to G.S. 115C-238.1.

(3) May receive funds for differentiated pay for teachers and administrators, in accordance with G.S. 115C-238.4, if they elect to participate in a differentiated pay plan.

(4) May be allowed increased flexibility in the expenditure of State funds, in accordance with G.S. 115C-238.5.

(5) May be granted waivers of certain State laws, regulations, and policies that inhibit their ability to reach local accountability goals, in accordance with G.S. 115C-238.6(a).

(6) Shall continue to use the Teacher Performance Appraisal Instrument (TPAI) for evaluating beginning teachers during the first three years of their employment; they may, however, develop other evaluation approaches for teachers who have attained career status.

The Department of Public Instruction shall provide technical assistance, including the provision of model evaluation processes and instruments, to local school administrative units that elect to develop dual personnel

evaluation processes. A dual personnel evaluation process includes (i) an evaluation designed to provide information to guide teachers in their professional growth and development, and (ii) an evaluation to provide information to make personnel decisions pertaining to hiring, termination, promotion, and reassignment."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 505 **CHAPTER 332**

AN ACT TO AMEND THE LAW REGARDING RESPITE CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-181.10 reads as rewritten:

"*§ 143B-181.10. Respite care program established; eligibility; services; administration; payment rates.*

(a) A respite care program is established to provide needed relief to caregivers of impaired adults who cannot be left alone because of mental or physical problems.

(b) Those eligible for respite care under the program established by this section are limited to those unpaid primary caregivers who are caring for people 60 years of age or older and their spouses, or those unpaid primary caregivers 60 years of age or older who are caring for persons 18 years of age or older, who require constant supervision and who cannot be left alone either because of memory impairment, physical immobility, or other problems that renders them unsafe alone.

(c) Respite care services provided by the programs established by this section may include:

(1) Counseling and training in the caregiving role, including coping mechanisms and behavior modification techniques;
(2) Counseling and accessing available local, regional, and State services;
(3) Support group development and facilitation;
(4) Assessment and care planning for the patient of the caregiver;
(5) Attendance and companion services for the patient in order to provide release time to the caregiver;
(6) Personal care services, including meal preparation, for the patient of the caregiver;

(7) Temporarily placing the person out of his home to provide the caregiver total respite when the mental or physical stress on the caregiver necessitates this type of respite.

~~Attendance and companion service, personal care service, and temporary placement of the patient out of his home is limited to a maximum of 48 hours of service per month or 576 hours of service per year per primary caregiver.~~ Program funds may provide no more than the current domiciliary home reimbursement rate for out of home placement. An out of home placement is defined as placement in a hospital, skilled or intermediate nursing facility, domiciliary home, adult day health center, or adult day care center. Duration of the service period may extend beyond a year.

(d) The respite care program established by this section shall be administered by the Division of Aging consistent with the policies and procedures of the Older Americans Act. The programs shall be coordinated with other appropriate Divisions in the Department of Human Resources, and with agencies and organizations concerned with the delivery of services to frail older adults and their unpaid caregivers. The Division shall choose respite care provider agencies in accordance with procedures outlined under the Older Americans Act and shall include the following criteria: documented capacity to provide care, adequacy of quality assurance, training, supervision, abuse prevention, complaint mechanisms, and cost. All funds allocated by the Division pursuant to this section shall be allocated on the same basis as funding under the Older Americans Act.

(e) Funding for the Division of Aging to administer this program shall not exceed the percentage allowed for administration as provided in the Older Americans Act but shall not be less than that budgeted for administration in fiscal year 1988-89.

(f) Unless prohibited by federal law, caregivers receiving respite care services through the program established by this section shall pay for some of the services on a sliding scale depending on their ability to pay. The Division of Aging, in consultation with the Councils of Governments in each region, shall specify rates of payment for the services."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 616 **CHAPTER 333**

AN ACT TO ALLOW FOR THE CHANGING OF A CHILD'S NAME BY PETITION NOT MORE THAN TWO TIMES UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 101-6 reads as rewritten:

"*§ 101-6. Effect of change; only one ~~change.~~ change, except as provided.*

(a) When the order is made and the applicant's name changed, he is entitled to all the privileges and protection under his new name as he would have been under the old name. No person shall be allowed to change his name under this Chapter but once, except that he shall be permitted to resume his former name upon compliance with the requirements and procedure set forth in this Chapter for change of ~~name.~~ name, and except as provided in subsection (b) of this section.

(b) For good cause shown, and upon compliance with the requirements and procedure set forth in this Chapter for change of name, the name of a minor child may be changed not more than two times under this Chapter."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 623 **CHAPTER 334**

AN ACT TO ALLOW CERTAIN COUNTIES TO ENTER INTO LONG-TERM SOLID WASTE DISPOSAL CONTRACTS AND FRANCHISE AGREEMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-299.6, as amended by Chapter 29 of the 1991 Session Laws, reads as rewritten:

"*§ 153A-299.6. Applicability.*

This Part shall apply only to Anson County, Beaufort County, Brunswick County, Carteret County, Columbus County, Craven County, Davie County, Edgecombe County, Gaston County, Hyde County, Lenoir County, Martin County, Montgomery County, New Hanover County, Pamlico County, Pitt County, Richmond County, Rowan County, Rutherford County, Sampson County, Washington County, Wayne County, Wilson County, and to any and all incorporated cities and towns situated within the foregoing counties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 640 **CHAPTER 335**

AN ACT TO PERMIT ADOPTIVE PARENTS TO PAY MEDICAL EXPENSES OF THE CHILD'S BIOLOGICAL MOTHER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 48-37 reads as rewritten:

"*§ 48-37. Compensation for placing or arranging placement of child for adoption prohibited.*

No person, agency, association, corporation, institution, society or other organization, except a licensed child-placing agency as defined by G.S. 48-2(4), or a county department of social services, shall offer or give, charge or accept any fee, compensation, consideration or thing of value for receiving or placing, arranging the placement of, or assisting in placing or arranging the placement of, any child for adoption. Provided, that the adoptive parents may pay the reasonable and actual medical expenses incurred by the biological mother incident to the birth of the child, and provided that in the petition for adoption the adoptive parents must disclose the amount of these payments and must represent that there were no gifts or payments of, or promises to give or pay, any other fee, compensation, consideration, or thing of value such as is prohibited by this section. The act of preparing and filing the adoption proceeding before the court shall not be construed as receiving or placing, arranging the placement of, or assisting in placing or arranging the placement of, any child for adoption. Any person who violates any provision of this section shall be guilty of a misdemeanor, and upon conviction or pleas of guilty shall be fined or imprisoned or both at the discretion of the court. Any person who is convicted of or pleads guilty to a second or subsequent violation of this section shall be guilty of a felony and shall be imprisoned for not more than three years or fined not more than ten thousand dollars ($10,000) or both at the discretion of the court."

Sec. 2. G.S. 48-16(a) reads as rewritten:

"(a) Upon the filing of a petition for adoption the court shall order the county director of social services, or a licensed child-placing agency through its authorized representative, to investigate the condition and antecedents of the child for the purpose of ascertaining whether he is a proper subject for adoption, to make appropriate inquiry to determine whether the proposed adoptive home is a suitable one for the child, and to investigate any other circumstances or conditions which may have a bearing on the adoption and of which the court should have knowledge, including compliance by the parties with G.S. 48-37."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 746 **CHAPTER 336**

AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO CONDUCT A PILOT PROGRAM TO STUDY THE USE OF RECYCLING BINS AT HIGHWAY REST AREAS, TO REQUIRE THE DEPARTMENT OF AGRICULTURE TO PROVIDE AND MAINTAIN RECYCLING BINS AT THE STATE FAIRGROUNDS IN RALEIGH, TO REQUIRE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO CONDUCT A PILOT PROGRAM TO STUDY THE USE OF RECYCLING BINS AT STATE PARKS, TO REQUIRE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO PROVIDE AND MAINTAIN RECYCLING BINS AT THE NORTH CAROLINA ZOOLOGICAL PARK.

The General Assembly of North Carolina enacts:

Section 1. The Department of Transportation shall conduct a pilot project to study the use of recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at rest areas located on highways in the Interstate Highway System and in the State highway system. The pilot project required by this section shall include collection sites at not less than six rest areas across the State. Collection sites shall be established no later than four months after the date this act becomes effective and shall be operated until 30 June 1993. The Department of Transportation shall report the results of this study and any recommendations to the Environmental Review Commission and to the 1993 General Assembly on or before 1 February 1993. The Department shall make an interim report to the Environmental Review Commission on or before 1 February 1992.

Sec. 2. G.S. 106-503 reads as rewritten:

"*§ 106-503. Board of Agriculture to operate fair.*

(a) The State fair and other projects provided for in G.S. 106-502, shall be managed, operated and conducted by the Board of Agriculture established in G.S. 106-502. To that end, said Board of Agriculture shall, at its first meeting after the ratification of this section, take over said State fair, together with all the lands, buildings, machinery, etc., located thereon, now belonging to said State fair and shall operate said State fair and other projects with all the authority and power conferred upon the former board of directors, and it shall make such rules and

regulations as it may deem necessary for the holding and conducting of said fair and other projects, and/or lease said fair properties so as to provide a State fair.

(b) The Board of Agriculture may adopt regulations establishing fees or charges for admission to the State Fairgrounds and for services provided incidental to the use of the State Fairgrounds.

(c) The Board of Agriculture, subject to the provisions of Chapter 146 of the General Statutes, may establish a schedule of rental rates for fair properties and specifications for the issuance of premiums so as to provide a State fair and other projects.

(d) The Board of Agriculture shall provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the State Fairgrounds."

Sec. 3. The Department of Environment, Health, and Natural Resources shall conduct a pilot project to study the use of recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at picnic areas and concessions at parks in the State Park System. The pilot project required by this section shall include collection sites at not less than six parks across the State. Collection sites shall be established no later than four months after the date this act becomes effective and shall be operated until 30 June 1993. The Department of Environment, Health, and Natural Resources shall report the results of this study and any recommendations to the Environmental Review Commission and to the 1993 General Assembly on or before 1 February 1993. The Department shall make an interim report to the Environmental Review Commission on or before 1 February 1992.

Sec. 4. G.S. 130A-309.06(a) is amended by adding a new subdivision to read:

"(12) Provide and maintain recycling bins for the collection and recycling of newspaper, aluminum cans, glass containers, and recyclable plastic beverage containers at the North Carolina Zoological Park."

Sec. 5. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each department and agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated to that department or agency.

Sec. 6. This act becomes effective 1 July 1991.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 750 **CHAPTER 337**

AN ACT TO ALLOW VERIFIABLE LEGAL GUARDIANS TO APPLY FOR AND OTHERWISE HANDLE ABSENTEE BALLOTS FOR THEIR WARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-227 reads as rewritten:

"*§ 163-227. State Board to prescribe form of application for absentee ballots; county to secure.*

(a) Applications for Absentee Ballots Generally. -- A voter falling in any one of the categories defined in G.S. 163-226, 163-226.1 or 163-226.2 may apply for absentee ballots not earlier than 50 days prior to the statewide, county or municipal election in which he seeks to vote and not later than 5:00 P.M. on the Tuesday before that election. Subject to all other provisions contained in this Article, a voter applying for an absentee ballot shall complete the standard application form to be secured by the county board of elections, as designed and prescribed by the State Board of Elections. The form shall contain lines to be checked off by each of the kinds of voters specified below:

(1) A voter expecting to be absent from the county of his residence all day on the day of the specified election. (G.S. 163-226(a)(1)).

(2) A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring before 5:00 P.M. on the Tuesday prior to the date of the specified election. (G.S. 163-226(a)(2)(3)). A voter who is unable to be present at the voting place to vote in person on the day of the specified election because of his sickness or other physical disability occurring since 5:00 P.M. on the Tuesday prior to the date of the specified election. (G.S. 163-226(a)(2)).

(4) A voter expecting to be absent from the county, or due to emergency disability will be unable to vote in person, or a person who qualifies under G.S. 163-226(a)(4), and who, in lieu of making application by mail, wishes to apply in person and receive a ballot which he may immediately vote in the office of the county board of elections.

(b) Types of Applications; Instructions. --

(1) Expected Absence from County on Election Day. -- A voter expected to be absent from the county in which registered during the entire period that the polls will be open on

primary or general election day, or a near relative, or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative by the chairman of the county board of elections.

The applicant shall sign his application personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form. The application form when properly filled out shall be transmitted by mail or delivered in person by the applicant or a near relative to the chairman or the supervisor of elections of the county board of elections.

(2) Absence for Sickness or Physical Disability Occurring before 5:00 P.M. on the Tuesday prior to the Primary or General Election. -- A voter expecting to be unable to go to the voting place to vote in person on primary or general election day because of his sickness or other physical disability, or his near relative or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which the voter is registered not earlier than 50 days nor later than 5:00 P.M. on the Tuesday before the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative or verifiable legal guardian by the chairman of the county board of elections.

The application shall be signed by the voter personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness, who shall sign his name in the place provided on the form.

The application form, when properly filled out, shall be transmitted by mail or delivered in person by the applicant or a near relative or verifiable legal guardian to the chairman or supervisor of elections of the county board of elections of the county in which the applicant is registered.

(3) Absence for Sickness or Physical Disability Occurring after 5:00 P.M. on the Tuesday prior to Primary or General Election. -- A voter expecting to be unable to go to the

voting place to vote in person on primary or general election day because of sickness or other disability occurring after 5:00 P.M. on the Tuesday before the election, or a near relative, or verifiable legal guardian, shall make written application for absentee ballots to the chairman of the board of elections of the county in which he is registered not later than 12:00 noon on the day preceding the election. The application shall be submitted in the form set out in this subdivision upon a copy which shall be furnished the voter or a near relative or a verifiable legal guardian by the chairman of the county board of elections.

The chairman of the county board of elections shall not issue or accept an application under the provisions of this subdivision later than 12:00 noon on the day preceding the election in which the voter seeks to vote.

The application shall be signed by the voter personally, or it shall be signed by a near relative or verifiable legal guardian. The application shall be signed in the presence of a witness who shall sign his name in the place provided on the form.

The certificate printed on the application form below the signatures of the applicant and his subscribing witness shall be filled in and signed in the presence of a witness by a licensed physician who is attending the applicant. The witness to the physician's certificate shall sign his name in the place provided on the form.

The application form, when properly filled out, signed by or for the applicant in the presence of a subscribing witness as provided in this subdivision, and certified and signed by the attending physician in the presence of a subscribing witness, may be transmitted by mail to the chairman or supervisor of elections of the board of elections of the county in which the applicant is registered, or it may be delivered to the chairman or supervisor of elections in person by the applicant or by his near relative.

(4) 'One-Stop' Voting Procedure, in Office of the County Board of Elections. -- A voter falling in the category specified in G.S. 163-227.2 may execute an application form and proceed to vote his absentee ballot in the office of the county board of elections only.

(c) Application Forms Issued by Chairman of County Board of Elections. -- The chairman of the county board of elections shall be sole custodian of all absentee ballot application forms, but he, the secretary of the board and the supervisor of elections of the board, in

accordance with one of the following two procedures, shall issue and deliver a single application form, upon request, to a person authorized to sign such an application under the provisions of this section:

(1) The chairman, secretary or supervisor of elections may deliver the form to a voter personally or to his near relative or verifiable legal guardian at the office of the county board of elections for the voter's own use; or

(2) The chairman, secretary or supervisor of elections may mail the form to a voter for his own use upon receipt of a written request from the voter or his near relative or verifiable legal guardian.

At the time he issues an application form, the chairman, secretary or supervisor of elections of the county board of elections shall number it and write the name of the voter in the space provided therefor at the top of the form. At the same time the chairman, secretary or supervisor of elections shall insert the name of the voter and the number assigned his application in the register of absentee ballot applications and ballots issued provided for in G.S. 163-228. If the application is requested by the voter's near relative, or verifiable legal guardian, the chairman, secretary or supervisor of elections also shall insert that person's name in the register after the name of the voter.

The chairman, secretary or supervisor of elections shall issue only one application form to a voter or his near relative or verifiable legal guardian unless a form previously issued is returned to the chairman, secretary or supervisor of elections and marked 'Void' by him. In such a situation, the chairman, secretary or supervisor of elections may issue another application form to the voter or a near relative or verifiable legal guardian, but he shall retain the voided application form in the board's records. If the application is requested by the voter's near relative or verifiable legal guardian, the chairman, secretary or supervisor of elections shall write the name of the near relative or verifiable legal guardian on the index of near relatives or verifiable legal guardians, applying for applications for absentee ballots; the index shall be in such form as may be prescribed or approved by the State Board of Elections; a separate index shall be maintained for each primary, general or special election in which absentee voting is allowed.

(3) Applications or Absentee Ballots Transmitted by Mail or in Person. -- An application for absentee ballots shall be made and signed only by the voter desiring to use them or the

voter's near relative or verifiable legal guardian and shall be valid only when transmitted to the chairman or supervisor of elections of the county board of elections by mail or delivered in person by the voter or his near relative or legal verifiable guardian.

(4) Who Is Authorized to Request Applications for Absentee Ballots. -- A voter may personally request an application for absentee ballots or may cause such request to be made through a near relative or verifiable legal guardian. For the purpose of this Article, 'near relative ~~or legal guardian~~' means spouse, brother, sister, parent, grandparent, child, or grandchild.

(5) The form of application for persons applying to vote in a primary under the provisions of this section shall be as designed and prescribed by the State Board of Elections. No voter shall be furnished ballots for voting in a primary except the ballots for candidates for nomination in the primary of the political party with which he is affiliated at the time he makes application for absentee ballots. The official registration records of the county in which the voter is registered shall be proof of the party, if any, with which the voter is affiliated.

(6) The county board of elections shall cause to be stamped or printed on the face of each application for absentee ballots the following legend, and the blank space in the legend to be completed:
'This application is issued for absentee ballots to be voted in the _____ (primary or general or special election) to be held in _____ County on the _____ day of _____, 19 __.' The county board of elections shall not issue any absentee ballots on the basis of any application that does not bear the completed legend.

(7) No applications shall be issued earlier than 60 days prior to the election in which the voter wishes to vote. Nothing herein shall prohibit the county board of elections from receiving written requests for applications earlier than 60 days prior to the election but such applications shall not be mailed or issued to the voter in person earlier than 60 days prior to the election.

(8) Applications for absentee ballots shall be issued only by mail or in the office of the county board of elections to the voter or a near relative or verifiable legal guardian authorized to make application. No election official shall issue applications

for absentee ballots except in compliance with the provisions stated herein."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 752 **CHAPTER 338**

AN ACT CONCERNING COMPENSATION OF MEMBERS AND SUPERVISORS OF COUNTY BOARDS OF ELECTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-32 reads as rewritten:

"§ *163-32. Compensation of members of county boards of elections.*

In full compensation of their services, members of the county board of elections (including the chairman) shall be paid by the county twenty-five dollars ($25.00) per ~~day~~ meeting for the time they are actually engaged in the discharge of their duties, together with reimbursement of expenditures necessary and incidental to the discharge of their duties; provided that members are not entitled to be compensated for more than one meeting held in any one 24-hour period. ~~The per diem payment shall be prorated if a board member is not actually engaged in the discharge of his duties for a full day. For the purposes of this section, a full day consists of five hours.~~ In its discretion, the board of county commissioners of any county may pay the chairman and members of the county board of elections compensation in addition to the per ~~diem~~ meeting and expense allowance provided in this paragraph.

In all counties the board of elections shall pay its clerk, assistant clerks, and other employees such compensation as it shall fix within budget appropriations. Counties which adopt full-time and permanent registration shall have authority to pay supervisors of elections and special registration commissioners whatever compensation they may fix within budget appropriations."

Sec. 2. G.S. 163-35(c) reads as rewritten:

"(c) Compensation of Supervisors of Elections. -- Compensation paid to supervisors of elections in all counties maintaining full-time registration (five days per week) shall be in the form of a salary in an amount recommended by the county board of elections and approved by the Board of County Commissioners and shall be commensurate with the salary paid to supervisors in counties similarly situated and similar in population and number of registered voters.

Beginning July 1, ~~1985~~ 1991, in any county operating under modified registration PLAN A, B, C, or D, the Board of County

Commissioners shall compensate the supervisor of elections at a minimum rate of ~~six dollars ($6.00)~~ eight dollars ($8.00) per hour for hours worked in attendance to his or her duties as prescribed by law, including rules and regulations adopted by the State Board of Elections. In addition, the county shall pay to the supervisor an hourly wage ~~equal~~ of at least ~~to that required by federal law~~ eight dollars ($8.00) per hour for all hours worked in excess of those prescribed in rules and regulations adopted by the State Board of Elections, when such additional hours have been approved by the county board of elections and such approval has been recorded in the official minutes of the county board of elections.

In addition to the compensation provided for herein, the supervisor of elections to the county board of elections shall be granted the same vacation leave, sick leave, and petty leave as granted to all other county employees. It shall also be the responsibility of the Board of County Commissioners to appropriate sufficient funds to compensate a replacement for the supervisor of elections when authorized leave is taken."

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 902 **CHAPTER 339**

AN ACT TO REMOVE FARM COVERAGES FROM THE JURISDICTION OF THE NORTH CAROLINA RATE BUREAU.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-36-1(3) reads as rewritten:

"(3) The Bureau shall have the duty and responsibility of promulgating and proposing rates for insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance; for insurance against theft of or physical damage to private passenger (nonfleet) motor vehicles; for liability insurance for such motor vehicles, automobile medical payments insurance, uninsured motorists coverage and other insurance coverages written in connection with the sale of such liability insurance; and for workers' compensation and employers' liability insurance written in connection therewith. The provisions of this subdivision shall not apply to motor vehicles operated under certificates

of authority from the Utilities Commission, the Interstate Commerce Commission, or their successor agencies, where insurance or other proof of financial responsibility is required by law or by regulations specifically applicable to such certificated vehicles. The Bureau shall have no jurisdiction over excess workers' compensation insurance for employers qualifying as self-insurers as provided in G.S. 97-93; nor shall the Bureau's jurisdiction include farm ~~buildings other than~~ buildings, farm dwellings and their appurtenant ~~structures;~~ structures, farm personal ~~property;~~ property or other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles, unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance, except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium."

Sec. 2. G.S. 58-40-15 reads as rewritten:

"*§ 58-40-15. Scope of application.*

The provisions of this Article shall apply to all insurance on risks or on operations in this State, except:

(1) Reinsurance, other than joint reinsurance to the extent stated in G.S. 58-40-60;

(2) Any policy of insurance against loss or damage to or legal liability in connection with property located outside this State, or any motor vehicle or aircraft principally garaged and used outside of this State, or any activity wholly carried on outside this State;

(3) Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies;

(4) Accident, health, or life insurance;

(5) Annuities;

(6) Repealed by Session Laws 1985, c. 666, s. 43.

(7) Mortgage guaranty insurance;

(8) Workers' compensation and employers' liability insurance written in connection therewith;

(9) For private passenger (nonfleet) motor vehicle liability insurance, automobile medical payments insurance, uninsured motorists' coverage and other insurance coverages written in connection with the sale of such liability insurance;

(10) Theft of or physical damage to private passenger (nonfleet) motor vehicles; and

(11) Insurance against loss to residential real property with not more than four housing units located in this State or any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance. Provided, however, that this Article shall apply to insurance against loss to farm dwellings, farm buildings ~~(other than farm dwellings~~ and their appurtenant ~~structures);~~ structures, farm personal property and other coverages written in connection with farm real or personal property; travel or camper trailers designed to be pulled by private passenger motor vehicles unless insured under policies covering nonfleet private passenger motor vehicles; residential real and personal property insured in multiple line insurance policies covering business activities as the primary insurable interest; and marine, general liability, burglary and theft, glass, and animal collision insurance except when such coverages are written as an integral part of a multiple line insurance policy for which there is an indivisible premium.

The provisions of this Article shall not apply to hospital service or medical service corporations, investment companies, mutual benefit associations, or fraternal beneficiary associations."

Sec. 3. This act is effective upon ratification. Rates, rating systems, territories, classifications, and policy forms lawfully in use on the date of ratification may continue to be used thereafter.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 911 **CHAPTER 340**

AN ACT TO PERMIT THE ISSUANCE OF CERTAIN ABC PERMITS TO ALUMNI ASSOCIATIONS ON SCHOOL AND COLLEGE CAMPUSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1006(a) reads as rewritten:

"(a) School and College Campuses. -- No permit for the sale of malt beverages, unfortified wine, or fortified wine shall be issued to a business on the campus or property of a public school or college unless that business is a hotel or a nonprofit alumni organization with a mixed beverages permit or a special occasion permit."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 964 **CHAPTER 341**

AN ACT TO CLARIFY THAT, WHEN MUNICIPALITIES USE THE NONPARTISAN-PRIMARY-AND-ELECTION METHOD, NO VOTER MAY CAST MORE VOTES THAN THERE ARE POSITIONS TO BE FILLED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-294 reads as rewritten:

"*§ 163-294. Determination of election results in cities using nonpartisan primaries.*

(a) In cities whose elections are nonpartisan and who use the nonpartisan primary and election method, there shall be a primary to narrow the field of candidates to two candidates for each position to be filled if, when the filing period closes, there are more than two candidates for a single office or the number of candidates for a group of offices exceeds twice the number of positions to be filled. If only one or two candidates file for a single office, no primary shall be held for that office and the candidates shall be declared nominated. If the number of candidates for a group of offices does not exceed twice the number of positions to be filled, no primary shall be held for those offices and the candidates shall be declared nominated.

(b) In the primary, the two candidates for a single office receiving the highest number of votes, and those candidates for a group of offices receiving the highest number of votes, equal to twice the number of positions to be filled, shall be declared nominated. In both the primary and election, a voter should not mark more names for any office than there are positions to be filled by election, as provided in G.S. 163-135(e) and G.S. 163-151(2). If two or more candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine their relative ranking by lot, and shall declare the nominees accordingly. The canvass of the primary shall be held on the Thursday following the primary.

(c) In the election, the names of those candidates declared nominated without a primary and those candidates nominated in the

primary shall be placed on the ballot. The candidate for a single office receiving the highest number of votes shall be elected. Those candidates for a group of offices receiving the highest number of votes, equal in number to the number of positions to be filled, shall be elected. If two candidates receiving the highest number of votes each received the same number of votes, the board of elections shall determine the winner by lot."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

H.B. 1124 **CHAPTER 342**

AN ACT TO MAKE CLARIFYING, CONFORMING, AND TECHNICAL AMENDMENTS TO VARIOUS LAWS RELATING TO ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 74-53(3) reads as rewritten:

"(3) ~~In open cast~~ At open pit mining operations, all overburden and spoil shall be left in a configuration which is in accordance with accepted conservation practices and which is suitable for the proposed subsequent use of the land."

Sec. 2. G.S. 104E-8(c)(6) reads as rewritten:

"(6) The Division of Radiation Protection of the ~~Department [of] Environment, Health, and Natural [Resources];~~ Department;".

Sec. 3. G.S. 104E-8(g) reads as rewritten:

"(g) All clerical and other services required by the Commission shall be supplied by the ~~Secretary of Environment, Health, and Natural [Resources].~~ Secretary."

Sec. 4. G.S. 115C-323 is amended by deleting the phrase "Secretary of Human Resources" and substituting "Secretary of Environment, Health, and Natural Resources".

Sec. 5. G.S. 120-70.33(3) reads as rewritten:

"(3) To evaluate actions of the Governor's Waste Management Board, the Radiation Protection Commission, and the ~~Radiation Protection Section of the Department of Human Resources,~~ Division of Radiation Protection of the Department of Environment, Health, and Natural Resources, and of any other board, commission, department, or agency of the State or local government as such actions relate to low-level radioactive waste management;".

Sec. 6. G.S. 130A-11 reads as rewritten:

"§ *130A-11. Residencies in public health.*

The Department shall establish a residency program designed to attract ~~physicians and~~ dentists into the field of public health and to train them in the specialty of public health practice. The program shall include practical experience in public health principles and practices."

Sec. 7. G.S. 130A-290(b) is amended by deleting the citation "G.S.130A-309.17" and substituting "G.S. 130A-309.24".

Sec. 8. G.S. 130A-310.5(c) reads as rewritten:

"(c) The cost of any action by the Secretary pursuant to this section may be paid from the Inactive Hazardous Sites Cleanup Fund, or the ~~Emergency Hazardous Waste Site Remedial Fund [Emergency Response Fund]~~ Emergency Response Fund established pursuant to G.S. 130A-306, subject to a later action for reimbursement pursuant to G.S. 130A-310.7."

Sec. 9. G.S. 143-214.5(g) reads as rewritten:

"(g) Civil Penalties. -- A local government which fails to adopt a local water supply watershed protection program as required by this section shall be subject to a civil penalty pursuant to G.S. ~~143-215.6(a)(5).~~ 143-215.6A(e). In any area of the State which is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any statewide minimum management requirement established pursuant to this section shall be subject to a civil penalty as specified in G.S. ~~143-215.6(a)(1)g.~~ 143-215.6A(a)(7)."

Sec. 10. G.S. 143-215.36(b)(4) reads as rewritten:

"(4) ~~If the person assessed fails to pay the amount of the assessment to the Department within 30 days after receipt of notice, the Commission may request the Attorney General to institute a civil action in the superior court of the county or counties in which the person assessed resides or has his or its principal place of business, to recover the amount of the assessment.~~ The Secretary shall notify any person assessed a civil penalty of the assessment and the specific reasons therefor by registered or certified mail, or by any means authorized by G.S. 1A-1, Rule 4. Contested case petitions shall be filed within 30 days of receipt of the notice of assessment."

Sec. 11. G.S. 143-215.36(b)(7) reads as rewritten:

"(7) The Secretary may delegate his powers and duties under this section to the Director of the Division of ~~Environmental Management~~ Land Resources of the Department."

Sec. 12. G.S. 143-215.45 reads as rewritten:

"§ *143-215.45. Transfer of right of withdrawal.*

A person with a right of withdrawal may assign or transfer it in whole or in part to another, subject to those rights of reassignment or transfer by the State specified in G.S. ~~143-354(11).~~ 143-354(a)(11). A person who has a right of withdrawal of excess volume of water by virtue of an assignment or transfer has an interest in water superior to other interests only to the extent that his withdrawal is in accordance with the terms of the assignment or transfer."

Sec. 13. G.S. 143-215.94EE(b) reads as rewritten:

"(b) Any unexplained discharge of oil, natural gas or drilling wastes occurring in waters beyond the jurisdiction of the State that for any reason penetrates within State jurisdiction shall be removed by or under the direction of the Department. Except for any expenses incurred by the responsible person, should such person become known, all expenses incurred in the removal of such discharges shall be paid promptly by the State from the ~~'Oil and~~ Oil or Other Hazardous Substances Pollution Protection ~~Fund'~~ Fund established pursuant to G.S. 143-215.87 or from any other available sources. In the case of unexplained discharges, the matter shall be referred by the Secretary to the North Carolina Attorney General for collection of damages pursuant to G.S. 143-215.94FF of this Part. At his discretion, the Attorney General may refer the matter to the State Bureau of Investigation or other appropriate State or federal authority to determine the identity of the responsible person."

Sec. 14. G.S. 143-215.94II(d) reads as rewritten:

"(d) In addition to the powers enumerated in G.S. 14-288.15, in the case of such an emergency described in subsection (a) of this section, the Governor is further authorized and empowered to transfer any funds available to him by statute for emergency use into the ~~'Oil and~~ Oil or Other Hazardous Substances Pollution Protection ~~Fund'~~ Fund created pursuant to G.S. 143-215.87, to be utilized for the purposes specified therein."

Sec. 15. (a) G.S. 143-350 reads as rewritten:

"§ *143-350. Definitions.*

~~Definitions as~~ As used in this Article:

(1) ~~'Environmental Management Commission'~~ 'Commission' means the Environmental Management ~~Commission created by G.S. 143B-282.~~ Commission.

(2) 'Department' means the Department of Environment, Health, and Natural ~~Resources created by G.S. 143-212.~~ Resources."

(b) The Revisor of Statutes shall delete the phrase "Environmental Management Commission" wherever it occurs in

Article 38 of Chapter 143 of the General Statutes and substitute the word "Commission".

Sec. 16. (a) The first sentence of Section 31 of Chapter 1004 of the 1989 Session Laws (1990 Regular Session) is amended by deleting "143-279.3" and substituting "143B-279.3".

(b) G.S. 143B-279.3(b)(18), as amended by Section 31 of Chapter 1004 of the 1989 Session Laws (1990 Regular Session) and subsection (a) of this section, is amended by inserting the word "Heritage" between the word "Natural" and the word "Trust".

(c) Sections 223, 224, 226, and 227 of Chapter 727 of the 1989 Session Laws apply to this section and to G.S. 143B-279.3, as amended by Section 31 of Chapter 1004 of the 1989 Session Laws (1990 Regular Session) and this section.

(d) This section is effective on and after 1 July 1989.

Sec. 17. G.S. 143B-285.11(4) reads as rewritten:

"(4) 'Hazardous waste ~~landfill~~ disposal facility' has the same meaning as in G.S. 130A-290."

Sec. 18. G.S. 153A-299.4 reads as rewritten:

"§ *153A-299.4. Approval by Department of ~~Human~~ Environment, Health, and Natural Resources.*

The Department of ~~Human~~ Environment, Health, and Natural Resources must approve all contracts entered into pursuant to this Part before such contract may become effective."

Sec. 19. Except as otherwise provided herein, this act is effective upon ratification.

In the General Assembly read three times and ratified this the 19th day of June, 1991.

S.B. 341 **CHAPTER 343**

AN ACT TO INCREASE VITAL RECORDS FEES AND TO ESTABLISH A NONREVERTING VITAL RECORDS AUTOMATION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-93 reads as rewritten:

"§ *130A-93. Access to vital records; copies.*

(a) Only the State Registrar shall have access to original vital records.

(b) The State Registrar shall provide copies or abstracts of vital records, except those described in subsections (d), (e), (f) and (g), to any person upon request.

(c) The State Registrar shall provide certified copies of vital records, except those described in subsections (d), (e), (f), and (g), only to the following:

(1) A person requesting a copy of the person's own vital records or that of the person's spouse, child, parent, brother or sister;

(2) A person seeking information for a legal determination of personal or property rights; or

(3) An authorized agent, attorney or legal representative of a person described above.

(d) Copies, certified copies or abstracts of birth certificates of adopted persons shall be provided in accordance with G.S. 48-29.

(e) Copies or abstracts of the health and medical information contained on birth certificates shall be provided only to a person requesting a copy of the health and medical information contained on the person's own birth certificate, a person authorized by that person, or a person who will use the information for research purposes. The State Registrar shall adopt rules providing for the use of this information for research purposes.

(f) Copies, certified copies or abstracts of new birth certificates issued to persons in the federal witness protection program shall be provided only to a person requesting a copy of the person's own birth certificate and that person's supervising federal marshall.

(g) No copies, certified copies or abstracts of vital records shall be provided to a person purporting to request copies, certified copies or abstracts of that person's own vital records upon determination that the person whose vital records are being requested is deceased.

(h) A certified copy issued under the provisions of this section shall have the same evidentiary value as the original and shall be prima facie evidence of the facts stated in the document. The State Registrar may appoint agents who shall have the authority to issue certified copies under a facsimile signature of the State Registrar. These copies shall have the same evidentiary value as those issued by the State Registrar.

(i) ~~The State Registrar shall be entitled to a fee not to exceed five dollars ($5.00) for issuing any copy of a vital record or for conducting a search of the files for the records when no copy is made. An account of all fees received shall be kept and the fees turned over to the State Treasurer for use by the Department for public health purposes.~~ Fees for issuing any copy of a vital record or for conducting a search of the files when no copy is made shall be as established in G.S. 130A-93.1.

(j) No person shall prepare or issue any certificate which purports to be an official certified copy of a vital record except as authorized in this Article or the rules."

Sec. 2. Chapter 130A of the General Statutes is amended by adding the following new section to read:

"*§ 130A-93.1. Fees for vital records copies or search; automation fund.*

(a) The State Registrar shall collect, process, and utilize fees for services as follows:

(1) A fee not to exceed ten dollars ($10.00) shall be charged for issuing any copy of a vital record or for conducting a routine search of the files for the record when no copy is made.

(2) A fee not to exceed ten dollars ($10.00) shall be charged in addition to the fee charged under subdivision (1) of this subsection and to all shipping and commercial charges when expedited service is specifically requested.

(3) An account of all fees received shall be kept and the fees turned over to the State Treasurer for use by the Department, subject to appropriation by the General Assembly, for public health purposes.

(b) A nonreverting vital records automation fund is established with the State Treasurer for the purpose of fully automating the system of vital records provided for in this Article. Five dollars ($5.00) of each fee collected pursuant to subdivision (1) of subsection (a) of this section shall be deposited to the fund. Subject to appropriation by the General Assembly, the Department shall utilize the fund to fully automate the vital records system. When funds sufficient to fully automate the system have accumulated in the fund, fees shall no longer be deposited to the fund but shall be deposited and utilized in accordance with subdivision (3) of subsection (a) of this section."

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

S.B. 690 **CHAPTER 344**

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF A LIEN ON A MOTOR VEHICLE, MOTORBOAT, WATERCRAFT OF ANY KIND, OR BOAT TRAILER IN CONNECTION WITH REPAIRS, WHEN THE LIENOR DOES NOT HAVE POSSESSION OF THE MOTOR VEHICLE, BOAT, WATERCRAFT OF ANY KIND, OR BOAT TRAILER.

The General Assembly of North Carolina enacts:

Section 1. The catch line of G.S. 44A-4 reads as rewritten:

"§ 44A-4. *Enforcement of ~~lien.~~ lien by sale.*"

Sec. 2. Article 1 of Chapter 44A of the General Statutes is amended by adding a new section to read:

"§ 44A-6.1. *Action to regain possession of a motor vehicle, motorboat, watercraft of any kind, or boat trailer.*

(a) When the lienor involuntarily relinquishes possession of the property and the property upon which the lien is claimed is a motor vehicle, the lienor may institute an action to regain possession of the motor vehicle, motorboat, watercraft of any kind, or boat trailer in small claims court any time following the lienor's involuntary loss of possession and following maturity of the obligation to pay charges. For purposes of this section, involuntary relinquishment of possession includes only those situations where the owner or other party takes possession of the motor vehicle, motorboat, watercraft of any kind, or boat trailer without the lienor's permission or without judicial process. If in such action the owner or other party retains possession of the motor vehicle, motorboat, watercraft of any kind, or boat trailer, he shall pay the amount of the lien asserted as bond into the clerk of the court in which such action is pending.

If within three days after service of the summons and complaint, as the number of days is computed in G.S. 1A-1, Rule 6, the defendant does not file a contrary statement of the amount of the lien at the time of the filing of the complaint, the amount set forth in the complaint shall be deemed to be the amount of the asserted lien. The clerk may at any time disburse to the lienor that portion of the cash bond which is not in dispute, upon application of the lienor. The magistrate shall:

(1) Direct appropriate disbursement of the disputed or undisbursed portion of the bond; and

(2) Direct appropriate possession of the motor vehicle if, in the judgment of the court, the plaintiff has a valid right to a lien.

(b) Either party to an action pursuant to subsection (a) of this section may appeal to district court for a trial *de novo.*"

Sec. 3. G.S. 44A-3 reads as rewritten:

"§ 44A-3. *When lien arises and terminates.*

(a) Liens conferred under this Article arise only when the lienor acquires possession of the property and terminate and become unenforceable when the lienor voluntarily relinquishes the possession of the property upon which a lien might be claimed, or when an owner, his agent, a legal possessor, or any other person having a security or other interest in the property tenders prior to sale the amount secured by the lien plus reasonable storage, boarding and other expenses incurred by the lienor. The reacquisition of possession of property voluntarily relinquished shall not reinstate the lien.

(b) Notwithstanding the provisions of subsection (a) of this section, liens conferred under G.S. 44A-2(d) shall not terminate when the lienor involuntarily relinquishes the possession of the motor vehicle, motorboat, watercraft of any kind, or boat trailer."

Sec. 4. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 122 **CHAPTER 345**

AN ACT TO ENCOURAGE STATE AGENCIES AND PUBLIC SCHOOLS TO DEVELOP ON- OR NEAR-SITE DAY CARE FACILITIES FOR THEIR EMPLOYEES.

Whereas, the General Assembly recognizes the need to encourage State agencies and institutions, including public schools, to take the initiative in helping State employees have quality day care for their children; and

Whereas, the General Assembly further recognizes that, during the present time of financial stress, it is imperative that creative and resourceful ways be found to meet these needs; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 3E.

"State/Public School Child Day Care Contracts.

"*§ 143-64.50. State/public school-contracted on-, near-site day care facilities; location authorization; contract for program services authorization.*

State agencies and local boards of education may contract with any city, county, or other political subdivision of the State, governmental or private agency, person, association, or corporation to establish child day care services in State buildings and public schools. If the child day care program is located in a State building that is not used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 143-341(4). If the child day care program is located in a State building used for legislative activity, the procedure for approving the location of the program shall be pursuant to G.S. 120-32.1. If the child day care program is located in any other State building, the procedure for contracting for child day care services shall be pursuant to G.S. 143-49(3). If the child day care program is located in a State building used for legislative activity, the

procedure for contracting for child day care services shall be pursuant to G.S. 120-32(4).

Contracts for services awarded pursuant to this section are exempt from the provisions of G.S. 66-58(a) and the contract may provide for payment of rent by the lessee or the operator of the facility.

"*§ 143-64.51. State/public school-contracted child day care facilities; licensing requirements.*

All child day care facilities established pursuant to this Article shall be licensed and regulated under the provisions of Article 7 of Chapter 110 of the General Statutes, entitled 'Day Care Facilities.'

"*§ 143-64.52. State/public school-contracted child day care facilities; limitation of State/local board liability.*

The operators of the child day care facilities established pursuant to this Article shall assume all financial and legal responsibility for the operation of the programs and shall maintain adequate insurance coverage for the operations taking place in the facilities. Neither the operator or any of the staff of the facilities are considered State employees or local board of education employees by virtue of this Article alone. The State or the local boards of education are financially and legally responsible only for the maintenance of the building."

Sec. 2. Nothing in this act shall be construed to allow the State of North Carolina to expend funds to implement the provisions of this act.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 131 **CHAPTER 346**

AN ACT REQUIRING THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA TO REPORT ON ITS PROGRESS IN ADOPTING STANDARDS TO CREATE AND ENHANCE AN ORGANIZED PROGRAM OF PUBLIC SERVICE AND TECHNICAL ASSISTANCE TO THE PUBLIC SCHOOLS.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 936 of the 1989 Session Laws reads as rewritten:

"Sec. 7. The Board of Governors of The University of North Carolina shall adopt standards to create and enhance an organized program of public service and technical assistance to the public schools. This program shall:

(1) Provide systematic access for public schools to consultation and advice available from members of the faculties of the constituent institutions;
(2) Facilitate and encourage research in the public schools and the application of the results of this research;
(3) Link the education faculties of the constituent institutions with public school teachers and administrators through public service requirements for the education faculties; and
(4) Create partnerships among all constituent institutions, their schools or departments of education, and the maximum number of public schools that could benefit from these partnerships.

The Board of Governors shall report on an annual basis to the Joint Legislative Commission on Governmental Operations on its progress in implementing the provisions of this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 276 **CHAPTER 347**

AN ACT TO PROVIDE FOR THE ADMINISTRATION OF THE POLITICAL PARTIES FINANCING FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-278.41 reads as rewritten:

"§ *163-278.41. Appropriations in general election years and other years.*

(a) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which a presidential election is held, the State chairman of that political party may apply to the State ~~Treasurer~~ Board of Elections (State Board) for the disbursement of all funds deposited with the State Treasurer on behalf of such party in the North Carolina Political Parties Financing ~~Fund.~~ Fund (Political Parties Fund) to be administered by the State Board of Elections and in which shall be placed money contributed by taxpayers, as provided in G.S. 105-159.1. Upon receipt of such application, the State ~~Treasurer~~ Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by ~~him~~ the State Treasurer on behalf of said chairman's political party, but provided that all such payments shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Additionally and upon receipt of such application, the State ~~Treasurer~~ Board shall pay over to the said chairman all funds currently held by the State Treasurer in the

'Presidential Election Year Candidates Fund' of that party, which funds shall be allocated and disbursed during the presidential election year by the same procedure as the funds received from the Political Parties Fund are allocated. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(b) Following the conclusion of the last primary or nominating convention held by a political party in a general election year in which there is not a presidential election, the State chairman of the political party may apply to the State ~~Treasurer~~ Board for the disbursement of all funds deposited on behalf of such party in the Political Parties Fund. Upon receipt of such application, the State ~~Treasurer~~ Board shall forthwith, and every 30 days thereafter, pay over to said chairman all funds currently held by ~~him~~ the State Treasurer on behalf of said chairman's political party provided that all such payments to the said chairman shall cease 30 days after the State Board of Elections has certified all of the results of the general election to the Secretary of State. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution pursuant to this section.

(c) In each year in which no general election is held, each State chairman of a political party on behalf of which funds have been deposited in the Political Parties Fund may, on or between August 1 and September 1 thereof, apply to the State ~~Treasurer~~ Board for payment of an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Upon receipt of such application, the State ~~Treasurer~~ Board shall pay over to said State chairman an amount not to exceed fifty percent (50%) of the then available funds credited to the account of his party. Additionally and upon receipt of such application, the State ~~Treasurer~~ Board shall direct the State Treasurer to place fifty percent (50%) of the said available funds in a separate interest bearing account to be known as the 'Presidential Election Year Candidates Fund of the (name of the party) Party' to be disbursed in accord with the provisions of subsection (a) above. Any remaining funds of the political party in the hands of the State Treasurer shall thereafter be held by him until eligible for distribution by the State Board pursuant to this section. Any interest earned on the funds deposited ~~by the State Treasurer~~ in such Presidential Election Year Campaign Fund shall be credited thereto."

Sec. 2. G.S. 163-278.43 is amended by adding a new subsection to read:

"(c1) The State Board shall review each application and certify that the political party is eligible to receive the funds requested. The State

Board shall establish rules for the administration and enforcement of this Article."

Sec. 3. G.S. 105-159.1 (a) reads as rewritten:

"(a) Every individual whose income tax liability for the taxable year is one dollar ($1.00) or more may designate on his or her income tax return that one dollar ($1.00) of the amount of tax paid by him or her to the Department shall be paid by the Secretary to the State Board of Elections for deposit with the State Treasurer for the use of all political parties upon a pro rata basis according to their respective party voter registrations according to the most recent certification of the State Board of Elections: Provided, however, that no political party with less than one percent (1%) of the total number of registered voters in the State shall receive any of these funds, and the registration of such a party shall not be included in calculating the pro rata distribution. As used in this section, the term 'political party' means a political party which at the last preceding general State election received at least ten percent (10%) of the entire vote cast in the State for Governor or for presidential electors, or a group of voters who by July 1 of the preceding calendar year, by virtue of a petition as a new political party, had duly qualified as a new political party within the meaning of Chapter 163 of the General Statutes."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 355 **CHAPTER 348**

AN ACT TO CLARIFY THE SUBPOENA POWER OF THE BOARD OF MEDICAL EXAMINERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-8 reads as rewritten:

"*§ 90-8. Officers may administer oaths, and subpoena witnesses, records and other materials.*

The president and secretary of the Board may administer oaths to all persons appearing before it as the Board may deem necessary to perform its duties, and ~~to~~ may summon and ~~to~~ issue subpoenas for the appearance of any witnesses deemed necessary to testify concerning any matter to be heard before or inquired into by the ~~Board, and to~~ Board. The Board may order that any patient records, documents or other material concerning any matter to be heard before or inquired into by the Board shall be produced before the Board or made available for ~~inspection.~~ inspection, notwithstanding any other provisions of law providing for the application of any physician-patient

privilege with respect to such records, documents or other material. All records, documents, or other material compiled by the Board are subject to the provisions of G.S. 90-16. Notwithstanding the provisions of G.S. 90-16, in any proceeding before the Board, in any record of any hearing before the Board, and in the notice of charges against any licensee, the Board shall withhold from public disclosure the identity of a patient including information relating to dates and places of treatment, or any other information that would tend to identify the patient, unless the patient or the representative of the patient expressly consents to the disclosure. Upon written request, the Board shall revoke a subpoena if, upon a hearing, it finds that the evidence the production of which is required does not relate to a matter in issue, or if the subpoena does not describe with sufficient particularity the evidence the production of which is required, or if for any other reason in law the subpoena is invalid."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 468 **CHAPTER 349**

AN ACT TO REQUIRE A PERMIT TO SELL BEES AND TO AUTHORIZE THE COMMISSIONER OF AGRICULTURE TO IMPOSE CIVIL PENALTIES FOR VIOLATIONS OF THE BEE AND HONEY ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 55 of Chapter 106 of the General Statutes is amended by adding a new section to read:

"*§ 106-639.1. Permit to sell bees.*

Prior to selling bees in North Carolina, a person shall obtain a permit from the Commissioner. Application for the permit shall be made on a form provided by the Commissioner, and shall be accompanied by a nonrefundable fee of twenty-five dollars ($25.00). The Commissioner may deny, suspend, or revoke a permit for any violation of this Article or rules adopted to implement the Article. Permits shall expire annually on December 31 and may be renewed upon payment of a fee of twenty-five dollars ($25.00). All proceedings concerning the denial, suspension, or revocation of a permit shall be conducted in accordance with the Administrative Procedure Act, Chapter 150B of the General Statutes. No permit shall be required for (i) the sale of less than 10 bee hives in a calendar year, (ii) a one-time going-out-of-business sale of less than

50 bee hives, or (iii) the renting of bees for pollination purposes or the movement of bees to gather honey."

Sec. 2. G.S. 106-644 reads as rewritten:

"§ *106-644. Penalties.*

(a) If anyone shall attempt to prevent inspection as provided in this Article or shall otherwise interfere with the Commissioner of Agriculture, or any of his agents, while engaging in the performance of his duties under this Article, or shall violate any provisions of this Article or any regulation of the Board of Agriculture adopted pursuant to this Article, he shall be guilty of a misdemeanor and shall be fined not less than fifty dollars ($50.00) or imprisoned for not more than 30 days, for each offense. Each day's violation shall constitute a separate offense.

(b) The Commissioner may assess a civil penalty of not more than ten thousand dollars ($10,000) against a person who violates this Article or a rule adopted to implement this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. No civil penalty may be assessed under this section unless the person has been given the opportunity for a hearing pursuant to the Administrative Procedure Act, Chapter 150B of the General Statutes. If not paid within 30 days after the effective date of a final decision by the Commissioner, the penalty may be collected by any lawful means for the collection of a debt."

Sec. 3. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 608 **CHAPTER 350**

AN ACT TO ALLOW THE VILLAGE OF BALD HEAD ISLAND TO OPERATE A CONTRACT POST OFFICE.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 16 of the 1991 Session Laws reads as rewritten:

"Sec. 2. This act applies to the Town of Stallings and the Village of Bald Head Island only."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 713 **CHAPTER 351**

AN ACT TO PROVIDE THAT THE DISTRICT BOARD OF A METROPOLITAN SEWERAGE DISTRICT MAY APPOINT AN ASSISTANT SECRETARY AND AN ASSISTANT TREASURER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-67(d) reads as rewritten:

"(d) District Board Procedures. -- Each member of the district board, before entering upon his duties, shall take and subscribe an oath or affirmation to support the Constitution and laws of the United States and of this State and to discharge faithfully the duties of his office; and a record of each such oath shall be filed with the clerk or clerks of the board or boards of commissioners.

The district board shall elect one of its members as chairman and another as vice-chairman and shall appoint a secretary and a treasurer who may, but need not, be members of the district board. The officers [offices] of secretary and treasurer may be combined. The district board may also appoint an assistant secretary and an assistant treasurer or, if the office is combined, an assistant secretary-treasurer who may, but need not, be members of the district board. The terms of office of the chairman, vice-chairman, ~~secretary and treasurer~~ secretary, treasurer, assistant secretary, and assistant treasurer shall be as provided in the bylaws of the district board.

The district board shall meet regularly at such places and dates as are determined by the board. Special meetings may be called by the chairman on his own initiative and shall be called by him upon request of two or more members of the board. All members shall be notified in writing at least 24 hours in advance of such meeting. A majority of the members of the district board shall constitute a quorum, and the affirmative vote of a majority of the members of the district board present at any meeting thereof shall be necessary for any action taken by the district board. No vacancy in the membership of the district board shall impair the right of a quorum to exercise all the rights and perform all the duties of the district board. Each member, including the chairman, shall be entitled to vote on any question. The members of the district board may receive compensation in an amount to be determined by the board, but not to exceed that compensation paid to members of Occupational Licensing Boards as provided in G.S. 93B-5(a) for each meeting of the board attended and for attendance at each regularly scheduled committee meeting of the board. The members of the district board may also be reimbursed the amount of actual expenses incurred by them in the performance of their duties."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 1118 **CHAPTER 352**

AN ACT TO CLARIFY THE LAW REGARDING THE PRETRIAL RELEASE OF JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-611 reads as rewritten:

"*§ 7A-611. Right to pretrial release; detention.*

Once the order of transfer has been entered, the juvenile has the right to pretrial release as provided in G.S. 15A-533 and 15A-534. The release order shall specify the person or persons to whom the juvenile may be released. Pending release under this Article, the judge shall order that the juvenile be detained in a local detention home as defined by G.S. 7A-517(15) or a regional detention home as defined by G.S. 7A-517(26) while awaiting trial. The judge may order the juvenile to be held in a holdover facility as defined by G.S. 7A-517(16) at any time the presence of the juvenile is required in court for pretrial hearings or trial, if the judge finds that it would be inconvenient to return the juvenile to the local or regional detention home.

Should the juvenile be found guilty, or enter a plea of guilty or no contest to criminal offenses in superior court and the juvenile receives an active sentence, then immediate transfer to the Department of Correction shall be ordered. Until such time as the juvenile is transferred to the Department of Correction, the juvenile may be detained in a holdover facility as defined by G.S 7A-517(16). The juvenile may not be detained in a local detention home as defined by G.S. 7A-517(15) or a regional detention home as defined by G.S. 517(26) [G.S. 7A-517(26)] pending transfer to the Department of Correction. The juvenile may be kept by the Department of Correction as a safekeeper until the juvenile is placed in an appropriate correctional program."

Sec. 2. This act becomes effective October 1, 1991, and applies to pretrial release orders issued on and after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

H.B. 1119 **CHAPTER 353**

AN ACT TO CLARIFY THE LAW RELATING TO THE INTERMITTENT COMMITMENT OF DELINQUENT JUVENILES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-649 reads as rewritten:

"*§ 7A-649. Dispositional alternatives for delinquent juvenile.*

In the case of any juvenile who is delinquent, the judge may:

(1) Suspend imposition of a more severe, statutorily permissible disposition with the provision that the juvenile meet certain conditions agreed to by him and specified in the dispositional order. The conditions shall not exceed the maximum criminal sanction permissible for the offense;

(2) Require restitution, full or partial, payable within a 12-month period to any person who has suffered loss or damage as a result of the offense committed by the juvenile. The judge may determine the amount, terms, and conditions of the restitution. If the juvenile participated with another person or persons, all participants should be jointly and severally responsible for the payment of restitution; however, the judge shall not require the juvenile to make restitution if the juvenile satisfies the court that he does not have, and could not reasonably acquire, the means to make restitution;

(3) Impose a fine related to the seriousness of the juvenile's offense. If the juvenile has the ability to pay the fine, it shall not exceed the maximum fine for the offense if committed by an adult;

(4) Order the juvenile to perform supervised community service consistent with the juvenile's age, skill, and ability, specifying the nature of the work and the number of hours required. The work shall be related to the seriousness of the juvenile's offense and in no event may the obligation to work exceed 12 months;

(5) Order the juvenile to a supervised day program, requiring him to be present at a specified place for all or part of every day or of certain days. The judge also may require the juvenile to comply with any other reasonable conditions specified in the dispositional order that are designed to facilitate supervision;

(6) Order the juvenile to a community-based program of academic or vocational education or to a professional

residential or nonresidential treatment program. Participation in the programs shall not exceed 12 months;

(7) Impose confinement on an intermittent basis in an approved detention facility. Confinement shall be limited ~~to:~~ to not more than five 24-hour periods, the timing of which is determined by the court in its discretion.

~~a. Night custody for no more than a total of five nights; or~~

~~b. Weekend custody for no more than a total of two weekends;~~

Confinement in either case shall be completed within a period of ~~60~~ 90 days from the date of disposition;

(8) Place the juvenile on probation under the supervision of a court counselor. In any case where a juvenile is placed on probation, the court counselor shall have the authority to visit the juvenile where he resides. The judge shall specify conditions of probation that are related to the needs of the juvenile including any of the following which apply:

a. That the juvenile shall remain on good behavior and not violate any laws;

b. That the juvenile attend school regularly;

c. That the juvenile not associate with specified persons or be in specified places;

d. That the juvenile report to a court counselor as often as required by a court counselor;

e. That the juvenile make specified financial restitution or pay a fine in accordance with subdivisions (2) and (3);

f. That the juvenile be employed regularly if not attending school.

An order of probation shall remain in force for a period not to exceed one year from the date entered. Prior to expiration of an order of probation, the judge may extend it for an additional period of one year after a hearing if he finds that the extension is necessary to protect the community or to safeguard the welfare of the juvenile;

(9) Order that the juvenile shall not be licensed to operate a motor vehicle in the State of North Carolina for as long as the court retains jurisdiction over the juvenile or for any shorter period of time;

(10) Commit the juvenile to the Division of Youth Services in accordance with G.S. 7A-652."

Sec. 2. This act becomes effective October 1, 1991, and applies to dispositions ordered on and after that date.

In the General Assembly read three times and ratified this the 20th day of June, 1991.

S.B. 122 **CHAPTER 354**

AN ACT TO DEFINE "CAREER STATE EMPLOYEE" AND TO ESTABLISH A DIFFERENT SET OF CRITERIA FOR DETERMINING WHETHER A STATE EMPLOYEE IS SUBJECT TO CHAPTER 126 OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. A new section to follow G.S. 126-1 is added to Article 1 of Chapter 126 of the General Statutes to read:

"*§ 126-1A. Career State employee defined.*

For the purpose of this Chapter, unless the context indicates otherwise:

(1) 'Career State employee' means a State employee

a. In a primary level position who has been continuously employed by the State of North Carolina for the immediate 12 preceding months;

b. In a secondary level or professional position who has been continuously employed by the State of North Carolina for the immediate 24 preceding months; or

c. In a management level or consultant position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months.

(2) A 'primary level position' means a position which is nonsupervisory in nature. A primary level position may be responsible for making work assignments to other positions, but the majority of the duties and responsibilities of the position are nonsupervisory.

(3) A 'secondary level position' means a position in which the majority of the work performed is directing the work of other positions. A secondary level position has the authority to assign work and to evaluate work; to hire employees; to discipline or dismiss employees; or has significant input into such actions.

(4) A 'professional position' means a position in which the work requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study, as distinguished from a general academic education, and requires the consistent exercise of discretion and judgment. The majority of the duties and responsibilities of such a position are nonsupervisory.

(5) A 'management level position' means a position which manages an established division or subdivision of a

department, agency or institution; which directs the work of one or more secondary level employees; which has the authority to hire, reward, discipline, or discharge employees; and which may provide suggestions for changes in policy to senior executives with policy-making authority.

(6) A 'consultant position' means a position in which the work requires knowledge in a specialized field. A consultant position customarily exercises discretion and independent judgment and provides research, guidance, and recommendations on policy matters to senior executives with policy-making authority."

Sec. 2. G.S. 126-4 reads as rewritten:

"*§ 126-4. Powers and duties of State Personnel Commission.*

Subject to the approval of the Governor, the State Personnel Commission shall establish policies and rules governing each of the following:

(1) A position classification plan which shall provide for the classification and reclassification of all positions subject to this Chapter according to the duties and responsibilities of the positions.

(2) A compensation plan which shall provide for minimum, maximum, and intermediate rates of pay for all employees subject to the provisions of this Chapter.

(3) For each class of positions, reasonable qualifications, as to age, character, physical condition, and other attributes pertinent to the work to be performed.

(4) A recruitment program to attract applicants to public employment and determine the relative fitness of applicants for the respective positions.

(5) Hours and days of work, holidays, vacation, sick leave, and other matters pertaining to the conditions of employment. The legal public holidays established by the Commission as paid holidays for State employees shall include Martin Luther King, Jr.'s, Birthday for all years after 1987. Provided, however, that the Commission shall not provide for a greater number of total paid holidays than were established for the year 1986. The Commission shall not delete Veterans Day as a holiday.

(6) The appointment, promotion, transfer, demotion and suspension.

(7) Cooperation with the Department of Public Instruction, the State Board of Education, the Board of Governors of the University of North Carolina, and the colleges and

universities of the State in developing pre-service and in-service training programs.

(7a) The separation of employees.

(8) The evaluation of employee performance, the granting of salary increments, and a program of meritorious service awards.

(9) The investigation of complaints and the issuing of such binding corrective orders or such other appropriate action concerning employment, promotion, demotion, transfer, discharge, and reinstatement in all cases as the Commission shall find justified.

(10) Such other programs and procedures as may be necessary to promote efficiency of administration and provide for a fair and reasonable system of personnel administration. This subdivision may not be construed to authorize the establishment of an incentive pay program.

(11) In cases where the Commission finds discrimination or orders reinstatement or back pay whether (i) heard by the Commission or (ii) appealed for limited review after settlement or (iii) resolved at the agency level, the assessment of reasonable attorneys' fees and witnesses' fees against the State agency involved.

(14) The implementation of G.S. 126-5(e).

(15) Recognition of State employees, public personnel management, and management excellence.

Such policies and rules shall not limit the power of any elected or appointed department head, in his discretion and upon his determination that it is in the best interest of the Department, to transfer, demote, or separate a State

(1) Employee in a ~~grade 60 or lower~~ primary level position who has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;

(2) Employee in a ~~grade 61 to grade 65~~ secondary level or professional position who has not been continuously employed by the State of North Carolina for the immediate ~~36~~ 24 preceding months; or

(3) Employee in a ~~grade 66 to grade 70~~ management level or consultant position who has not been continuously employed by the State of North Carolina for the immediate ~~48~~ 36 preceding ~~months; or~~ months.

~~(4) Employee in a grade 71 or higher position who has not been continuously employed by the State of North Carolina for the immediate 60 preceding months.~~"

Sec. 3. G.S. 126-5(c) reads as rewritten:

"§ *126-5. Employees subject to Chapter; exemptions.*

(c) Except as to the policies, rules, and plans established by the Commission pursuant to G.S. 126-4(1), 126-4(2), 126-4(3), 126-4(4), 126-4(5), 126-4(6), and 126-7, and except as to the provisions of Articles 6 and 7 of this Chapter, the provisions of this Chapter shall not apply to:

(1) ~~An employee of the State of North Carolina~~ A State employee who:

a. Is in a ~~grade 60 or lower~~ primary level position and has not been continuously employed by the State of North Carolina for the immediate 12 preceding months;

b. Is in a ~~grade 61 to grade 65~~ secondary level or professional position and has not been continuously employed by the State of North Carolina for the immediate ~~36~~ 24 preceding months; or

c. Is in a ~~grade 66 to grade 70~~ management level or consultant position and has not been continuously employed by the State of North Carolina for the immediate ~~48~~ 36 preceding ~~months; or~~ months.

~~d. Is in a grade 71 or higher position and has not been continuously employed by the State of North Carolina for the immediate 60 preceding months.~~

(2) One confidential assistant and two confidential secretaries for each elected or appointed department head and one confidential secretary for each chief deputy or chief administrative assistant.

(3) Employees in policymaking positions designated as exempt pursuant to G.S. 126-5(d).

(4) The chief deputy or chief administrative assistant to the head of each State department who is designated either by statute or by the department head to act for and perform all of the duties of such department head during his absence or incapacity."

Sec. 4. G.S. 126-34 reads as rewritten:

"§ *126-34. Grievance appeal for career State employees.*

Any ~~permanent~~ career State employee having a grievance arising out of or due to his employment and who does not allege discrimination because of his age, sex, race, color, national origin, religion, creed, handicapping condition as defined by G.S. 168A-3, or political affiliation shall first discuss his problem or grievance with his supervisor and follow the grievance procedure established by his department or agency."

Sec. 5. G.S. 126-35 reads as rewritten:

"§ *126-35. Written statement of reason for disciplinary action.*

(a) No ~~permanent~~ career State employee subject to the State Personnel Act shall be discharged, suspended, or reduced in pay or position, except for just cause. In cases of such disciplinary action, the employee shall, before the action is taken, be furnished with a statement in writing setting forth in numerical order the specific acts or omissions that are the reasons for the disciplinary action and the employee's appeal rights. The employee shall be permitted 15 days from the date the statement is delivered to appeal to the head of the department. A copy of the written statement given the employee and the employee's appeal shall be filed by the department with the State Personnel Director within five days of their delivery. However, an employee may be suspended without warning for causes relating to personal conduct detrimental to State service, pending the giving of written reasons, in order to avoid undue disruption of work or to protect the safety of persons or property or for other serious reasons. The employee, if he is not satisfied with the final decision of the head of the department, or if he is unable, within a reasonable period of time, to obtain a final decision by the head of the department, may appeal to the State Personnel Commission. Such appeal shall be filed not later than 30 days after receipt of notice of the department head's decision.

(b) Notwithstanding any other provision of this Chapter, a reduction in pay or position which is not imposed for disciplinary reasons shall not be considered a disciplinary action within the meaning of this Article. Disciplinary actions, for the purpose of this Article, are those actions taken in accordance with the disciplinary procedures adopted by the State Personnel Commission and specifically based on unsatisfactory job performance, unacceptable personal conduct or a combination of the two.

(c) For the purposes of contested case hearings under Chapter 150B, an involuntary separation (such as a separation due to a reduction in force) shall be treated in the same fashion as if it were a disciplinary action."

Sec. 6. G.S. 126-36.2 reads as rewritten:

"*§ 126-36.2. Appeal to Personnel Commission by career State employee denied notice of vacancy or priority consideration.*

Any career State employee who has reason to believe that he was denied promotion due to the failure of the agency, department, or institution that had a job vacancy to:

(1) Post notice of the job vacancy pursuant to G.S. 126-7.1(a) or;

(2) Give him priority consideration pursuant to G.S. 126-7.1(c)

may appeal directly to the State Personnel Commission."

Sec. 7. G.S. 126-39 reads as rewritten:

"§ *126-39. ~~State employee defined.~~ Scope of this Article.*

~~For the purposes of this Article, except~~ Except for positions subject to competitive service and except for appeals brought under G.S. 126-16, ~~and~~ 126-25, and 126-36, ~~the terms "permanent State employee," "permanent employee," "State employee" or "former State employee" as used in this Article shall mean a person~~

~~(1) In a grade 60 or lower position who has been continuously employed by the State of North Carolina for the immediate 12 preceding months;~~

~~(2) In a grade 61 to grade 65 position who has been continuously employed by the State of North Carolina for the immediate 36 preceding months;~~

~~(3) In a grade 66 to grade 70 position who has been continuously employed by the State of North Carolina for the immediate 48 preceding months; or~~

~~(4) In a grade 71 or higher position who has been continuously employed by the State of North Carolina for the immediate 60 preceding months~~

this Article applies to all State employees who are career State employees at the time of the act, grievance, or employment practice complained of."

Sec. 8. The Office of State Personnel shall adopt rules to implement this act.

Sec. 9. This act becomes effective July 1, 1993, and applies to all State employees hired on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 123 **CHAPTER 355**

AN ACT TO AUTHORIZE THE TRANSFER OF PLUMBING AND HEATING LICENSE NUMBERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21(e) reads as rewritten:

"(e) Posting License; License Number on Contracts, etc. -- The current license issued in accordance with the provisions of this Article shall be posted in the business location of the licensee, and its number shall appear on all proposals or contracts and requests for permits issued by municipalities. The initial qualified licensee on a license is the permanent possessor of the license number under which that license is issued, except that a licensee, or the licensee's legal agent, personal representative, heirs or assigns, may designate in writing to the Board a qualified licensee to whom the Board shall assign the

license number upon the payment of a ten dollars ($10.00) assignment fee. Upon such assignment, the qualified licensee becomes the permanent possessor of the assigned license number. Notwithstanding the foregoing, the license number may be assigned only to a qualified licensee who has been employed by the initial licensee's plumbing and heating company for at least 10 years or is a lineal relative, sibling, first cousin, nephew, niece, daughter-in-law, son-in-law, brother-in-law, or sister-in-law of the initial licensee. Each successive licensee to whom a license number is assigned under this subsection may assign the license number in the same manner as provided in this subsection."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 234 **CHAPTER 356**

AN ACT TO PERMIT REGIONAL SOLID WASTE MANAGEMENT AUTHORITIES TO RECEIVE ANNUAL SALES TAX REFUNDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-164.14(c) reads as rewritten:

"(c) Upon receipt of timely applications for refund, the Secretary of Revenue shall make refunds annually to all governmental entities, as hereinafter defined, of sales and use tax paid under this Article, except under G.S. 105-164.4(4a) and G.S. 105-164.4(4c), by said governmental entities on direct purchases of tangible personal property. Sales and use tax liability indirectly incurred by such governmental entities on building materials, supplies, fixtures and equipment which shall become a part of or annexed to any building or structure being erected, altered or repaired which is owned or leased by such governmental entities shall be construed as sales or use tax liability incurred on direct purchases by such governmental entities, and such entities may obtain refunds of such taxes indirectly paid. The refund provisions contained in this subsection shall not apply to any governmental entities not specifically named herein. In order to receive the refund herein provided for, governmental entities shall file a written request for said refund within six months of the close of the fiscal year of the governmental entities seeking said refund, and such request for refund shall be substantiated by such records, receipts and information as the Secretary may require. No refunds shall be made on applications not filed within the time allowed by this section and in such manner as the Secretary may otherwise require. The term

'governmental entities,' for the purposes of this subsection, shall mean all counties, incorporated cities and towns, water and sewer authorities created and existing under the provisions of Chapter 162A of the General Statutes, lake authorities created by a board of county commissioners pursuant to an act of the General Assembly, sanitary districts, regional councils of governments created pursuant to G.S. 160A-470, area mental health, mental retardation, and substance abuse authorities (other than single-county area authorities) established pursuant to Article 4 of Chapter 122C of the General Statutes, district health departments, regional planning and economic development commissions created pursuant to G.S. 158-14, regional sports authorities created pursuant to G.S. 160A-479, regional economic development commissions created pursuant to G.S. 158-8, regional planning commissions created pursuant to G.S. 153A-391, regional solid waste management authorities created pursuant to G.S. 153A-421, metropolitan sewerage districts and metropolitan water districts in this State, the North Carolina Low-Level Radioactive Waste Management Authority created pursuant to Chapter 104G of the General Statutes, the North Carolina Hazardous Waste Management Commission created pursuant to Chapter 130B of the General Statutes, and the Rockingham County Airport Authority."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 277 **CHAPTER 357**

AN ACT TO ASSIST STATE AGENCIES IN FILLING VACANCIES WITHIN SHORTAGE OCCUPATIONS, INCLUDING NURSING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-29 reads as rewritten:

"*§ 96-29. Openings listed by State agencies.*

Every State agency shall list with the Employment Security Commission of North Carolina every job opening occurring within the agency which opening the agency wishes filled and which will not be filled solely by promotion or transfer from within the existing State government work force. The listing shall include a brief description of the duties and salary range and shall be filed with the Commission within 30 days after the occurrence of the opening. The State agency may not fill the job opening for at least 21 days after the listing has been filed with the Commission. The listing agency shall report to the

Commission the filling of any listed opening within 15 days after the opening has been filled.

The Employment Security Commission may act to waive the 21-day listing period for job openings in job classifications declared to be in short supply by the State Personnel Commission, upon the request of a State agency, if the 21-day listing requirement for these classifications hinders the agency in providing essential services."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 306 **CHAPTER 358**

AN ACT TO CLARIFY THE LAW REGARDING STATE AND FEDERAL SURPLUS PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-49(4) reads as rewritten:

"(4) To have general supervision of all storerooms and stores operated by the State government, or any of its departments, institutions or ~~agencies; to provide for transfer or exchange to or between all State departments, institutions and agencies, or to sell all supplies, materials and equipment which are surplus, obsolete or unused;~~ agencies and to have supervision of inventories of all tangible personal property belonging to the State government, or any of its departments, institutions or agencies. ~~All receipts from the transfer or sale of such surplus, obsolete or unused equipment of State departments, institutions and agencies which are supported by appropriations from the general fund, except where such receipts have been anticipated for, or budgeted against the cost of replacements, shall be placed by the Secretary in an equipment reserve fund from which expenditures may be made only with prior approval of the Director of the Budget.~~ The duties imposed by this subdivision shall not relieve any department, institution or agency of the State government from accountability for equipment, materials, supplies and tangible personal property under its control. ~~Prior to taking any action under this subdivision concerning expenditures from the equipment reserve fund, the Secretary may consult with the Advisory Budget Commission.~~"

Sec. 2. Chapter 143 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 31A1.

"State Surplus Property Agency.

"§ 143-64.9A. Department of Administration designated State Surplus Property Agency.

The Department of Administration is designated as the State agency for State surplus property, and with respect to the acquisition of State surplus property the agency shall be subject to the supervision and direction of the Secretary of Administration.

"§ 143-64.9B. Definitions.

As used in this Article, except where the context clearly requires otherwise:

(1) 'Agency' means an existing department, institution, commission, committee, board, division, or bureau of the State.

(2) 'Nonprofit tax exempt organizations' means those nonprofit tax exempt medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, and civil defense organizations, that have been certified by the Internal Revenue Service as tax-exempt nonprofit organizations under section 501(c)(3) of the United States Internal Revenue Code of 1954.

"§ 143-64.9C. Powers and duties of the State agency for surplus property.

(a) The State Surplus Property Agency is authorized and directed to:

(1) Sell all supplies, materials, and equipment that are surplus, obsolete, or unused;

(2) Warehouse such property; and

(3) Distribute such property to tax-supported or nonprofit tax-exempt organizations.

(b) The State Surplus Property Agency is authorized and empowered to act as a clearinghouse of information for agencies and private nonprofit tax-exempt organizations, to locate property available for acquisition from State agencies, to ascertain the terms and conditions under which the property may be obtained, to receive requests from agencies and private nonprofit tax-exempt organizations, and transmit all available information about the property, and to aid and assist the agencies and private nonprofit tax-exempt organizations in transactions for the acquisition of State surplus property.

(c) The State agency for surplus property, in the administration of this Article, shall cooperate to the fullest extent consistent with the provisions of this Article, with the departments or agencies of the State.

"*§ 143-64.9D. Powers of the Secretary to delegate authority.*

(a) The Secretary of Administration may delegate to any employees of the State agency for surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this Article. The Secretary of Administration may, in his discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this Article.

(b) The Secretary of Administration may adopt rules necessary to carry out this Article.

"*§ 143-64.9E. Warehousing, transfer, etc., charges.*

The State agency for surplus property may assess and collect service charges or fees for the acquisition, receipt, warehousing, distribution or transfer of any State surplus property. All receipts from the transfer or sale of surplus, obsolete, or unused equipment of State departments, institutions, and agencies, that are supported by appropriations from the General Fund, except where the receipts have been anticipated for, or budgeted against the cost of replacements, shall be placed by the Secretary in an equipment reserve fund from which expenditures may be made only with prior approval of the Director of the Budget. Prior to taking any action under this section concerning expenditures from the equipment reserve fund, the Secretary shall consult with the Advisory Budget Commission and the Joint Legislative Commission on Governmental Operations."

Sec. 3. Article 3A of Chapter 143 of the General Statutes reads as rewritten:

"ARTICLE 3A.

"State Agency for Federal Surplus Property.

"*§ 143-64.1. Department of Administration designated State agency for federal surplus property.*

The Department of Administration is hereby designated as the State agency for federal surplus property, and with respect to the acquisition of federal surplus property said agency shall be subject to the supervision and direction of the Secretary of ~~Administration who is authorized to prescribe the duties which shall be assigned to the personnel of said Department for surplus property purposes.~~ Administration.

"*§ 143-64.2. Authority and duties of the State agency for federal surplus property.*

(a) The State agency for federal surplus property is hereby authorized and empowered

(1) To acquire from the United States of America such property, including equipment, materials, books, or other supplies under the control of any department or agency of the United States of America as may be usable and necessary for educational purposes, public health purposes, or civil defense purposes, including research;

(2) To warehouse such property; and

(3) To distribute such property to tax-supported or nonprofit and tax-exempt (under section 501(c)(3) of the United States Internal Revenue Code of 1954) medical institutions, hospitals, clinics, health centers, school systems, schools, colleges, universities, schools for the mentally retarded, schools for the physically handicapped, radio and television stations licensed by the Federal Communications Commission as educational radio or educational television stations, public libraries, civil defense organizations, and such other eligible donees within the State as are permitted to receive surplus property of the United States of America under the Federal Property and Administrative Services Act of 1949, as amended.

(b) The State agency for federal surplus property may adopt rules necessary to carry out this Article.

(c) The State agency for federal surplus property may appoint advisory boards or committees as needed to ensure that this Article and the rules adopted under this Article are consistent with federal law concerning surplus property.

(d) The State agency for surplus property is authorized and empowered to take such action, make such expenditures and enter into such contracts, agreements and undertakings for and in the name of the State, require such reports and make such investigations as may be required by law or regulation of the United States of America in connection with the receipt, warehousing, and distribution of property received by the State agency for federal surplus property from the United States of America.

(e) The State agency for federal surplus property is authorized and empowered to act as clearinghouse of information for the public and private nonprofit institutions and agencies referred to in subsection (a) of this section, to locate property available for acquisition from the United States of America, to ascertain the terms and conditions under which such property may be obtained, to receive requests from the above-mentioned institutions and agencies and to transmit to them all available information in reference to such property, and to aid and

assist such institutions and agencies in every way possible in the consummation or acquisition or transactions hereunder.

(f) The State agency for federal surplus property, in the administration of this Article, shall cooperate to the fullest extent consistent with the provisions of this Article, with the departments or agencies of the United States of America and shall make such reports in such form and containing such information as the United States of America or any of its departments or agencies may from time to time require, and it shall comply with the laws of the United States of America and the rules and regulations of any of the departments or agencies of the United States of America governing the allocation, transfer, use, or accounting for, property donable or donated to the State.

"§ 143-64.3. Power of Department of Administration and Secretary to delegate authority.

The Department of Administration and/or the Secretary of Administration may delegate to any employees of the State agency for federal surplus property such power and authority as he or they deem reasonable and proper for the effective administration of this Article. The Department of Administration and/or the Secretary of Administration may, in his or their discretion, bond any person in the employ of the State agency for surplus property, handling moneys, signing checks, or receiving or distributing property from the United States under authority of this Article.

"§ 143-64.4. Warehousing, transfer, etc., charges.

The State agency for federal surplus property is hereby authorized and empowered to assess and collect service charges or fees for the acquisition, receipts, warehousing, distribution or transfer of any property acquired by donation from the United States of America for educational purposes, public health purposes, public libraries or civil defense purposes, including research, and any such charges made or fees assessed shall be limited to those reasonably related to the costs of care and handling in respect to the acquisition, receipts, warehousing, distribution or transfer of the property by the State agency for surplus property.

"§ 143-64.5. Department of Agriculture exempted from application of Article.

Notwithstanding any provisions or limitations of this Article, the North Carolina Department of Agriculture is authorized and empowered to distribute food, surplus commodities and agricultural products under contracts and agreements with the federal government or any of its departments or agencies, and the North Carolina Department of Agriculture is authorized and empowered to adopt rules in order to conform with federal requirements and standards for such

distribution and also for the proper distribution of such food, commodities and agricultural products. To the extent set forth above and in this section, the provisions of this Article shall not apply to the North Carolina Department of Agriculture."

Sec. 4. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 372 **CHAPTER 359**

AN ACT TO MAKE CHANGES TO THE LAW RELATING TO EXEMPTIONS TO CONFIDENTIALITY OF MENTAL HEALTH CLIENTS' RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-55(a) reads as rewritten:

"(a) Any area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill may share confidential information regarding any client of that facility with any other area or State facility or the psychiatric service of the University of North Carolina Hospitals at Chapel Hill ~~upon a written determination by the responsible professional that such disclosure is necessary~~ when necessary to coordinate appropriate and effective care, treatment or habilitation of the client and ~~that~~ when failure to share this information would be detrimental to the care, treatment or habilitation of the ~~client; provided however, confidential information may be shared without a written determination either between State facilities or between area facilities within the same catchment area.~~ client. Under the circumstances described in this subsection, the consent of the client or legally responsible person is not required for this information to be furnished, and the information may be furnished despite objection by the client."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 385 **CHAPTER 360**

AN ACT TO PROTECT THE SECURITY OF OCCUPATIONAL LICENSING EXAMINATIONS.

The General Assembly of North Carolina enacts:

Section 1G.S. 93B-8(c) reads as rewritten:

"(c) Each applicant who takes an examination given by any occupational licensing board, and does not pass such examination, shall have the privilege to review his examination in the presence of the board or a representative of the board. Except as provided in this subsection, an occupational licensing board shall not be required to disclose the contents of any examination or of any questions which have appeared thereon, or which may appear thereon in the future."

Sec. 2. G.S. 14-401.1 reads as rewritten:

"*§ 14-401.1. Misdemeanor to tamper with examination questions.*

Any person ~~who~~ who, without authority of the entity who prepares or administers the examination, purloins, steals, buys, receives, or sells, gives or offers to buy, give, or sell any examination questions or copies thereof of any examination provided and prepared by law ~~before the date of the examination for which they shall have been prepared,~~ shall be guilty of a ~~misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00), imprisonment for not more than six months, or both.~~ misdemeanor."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 413 **CHAPTER 361**

AN ACT TO MODIFY THE STATUTORY DESCRIPTION OF THE STATE FLAG.

The General Assembly of North Carolina enacts:

Section 1. G.S. 144-1 reads as rewritten:

"*§ 144-1. State flag.*

The flag of North Carolina shall consist of a blue union, containing in the center thereof a white star with the letter 'N' in gilt on the left and the letter 'C' in gilt on the right of said star, the circle containing the same to be one third the width of said union. The fly of the flag shall consist of two equally proportioned bars, the upper bar to be red, the lower bar to be white; the length of the bars horizontally shall be equal to the perpendicular length of the union, and the total length of the flag shall be one ~~third~~ half more than its width. Above the star in the center of the union there shall be a gilt scroll in semicircular form, containing in black letters this inscription: ~~'May 20th, 1775,'~~ 'May 20th 1775' and below the star there shall be a similar scroll containing in black letters the inscription: ~~'April 12th, 1776.'~~ 'April 12th 1776'."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 427 **CHAPTER 362**

AN ACT TO PROVIDE A GRACE PERIOD FOR MILITARY PERSONNEL TO RENEW OCCUPATIONAL LICENSES EXPIRING DURING DEPLOYMENT OR ACTIVE DUTY, AND TO DISCOUNT FEES.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any other provision of law, a person who holds a license, as defined in G.S. 93B-1, and who was, on or after August 6, 1990, deployed outside the State or ordered to active military duty as a result of "Operation Desert Shield" or "Operation Desert Storm," is allowed 90 days from the date of the person's return to the State to renew a license that expired during the deployment. During the period of deployment or active duty and until the expiration of the 90-day period provided for in this act, expired licenses that are within the scope of this act shall remain valid, as if they had not expired.

Sec. 2. Upon renewal of a license under Section 1 of this act, any renewal fee required by law shall be prorated over the period covered by the license and reduced in proportion to the period of time that the licensee was deployed outside the State.

Sec. 3. This act is effective retroactively as of August 6, 1990.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 488 **CHAPTER 363**

AN ACT TO REQUIRE REGISTRATION OFFICIALS TO FORWARD TO COUNTY BOARDS OF ELECTIONS COMPLETED APPLICATIONS TO REGISTER NO LATER THAN SEVENTY-TWO HOURS AFTER THE CLOSE OF REGISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-67(a) reads as rewritten:

"(a) The county boards of elections shall establish, prior to January 1, 1971, a full-time system of registration, as prescribed by the State Board of Elections, under which the registration books, process, and records shall be open continuously for the acceptance of registration applications and for the registration of voters at all reasonable hours

and time consistent with the daily function of all other county offices. In such counties no registration shall entitle a registrant to vote in any primary, general or special election unless the registrant shall have made application not later than the twenty-first day, excluding Saturdays and Sundays, immediately preceding such primary, general or special election, provided that nothing shall prohibit registrants from registering to vote in future elections during such period.

When full-time registration has been established in a county, the official record of registration shall be made and kept in the form of an application to register which, as prescribed by the State Board of Elections, shall contain all information necessary to show the applicant's qualifications to register. In such a county, no person shall be registered to vote without first making a written, sworn, and signed application to register upon the form prescribed by the State Board of Elections. If the applicant cannot write because of physical disability, his name shall be written on the application for him by the election official to whom he makes application, but the specific reason for the applicant's failure to sign shall be clearly stated upon the face of the application.

Registrars, judges of election, and special registration commissioners appointed under the provisions of G.S. 163-41 may take registration applications from and administer registration oaths to qualified applicants without regard to the precinct residence of the registrar, judge of election, special registration commissioner, or applicant.

Applications to register which have been completed by persons who have taken the required oath shall be forwarded promptly, and in no case more than 72 hours after the close of registration, to the county board of elections. Failure to forward the application within 72 hours shall not disqualify an otherwise properly qualified voter from voting. An application to register shall constitute a valid registration unless the county board of elections shall notify the applicant of its rejection within 30 days after its completion; provided that where the application is completed during the last 51 days prior to the election but at least 21 days, excluding Saturdays and Sundays, prior to the election, the notification of rejection shall be made no less than 14 days prior to the election or the application shall constitute a valid registration. If the application is rejected after the close of the registration books as provided in G.S. 163-67(a) the board shall notify the applicant at least 14 days before the election that it has rejected his application. The applicant may appear before the board and, if he establishes his qualifications to register prior to the election, he shall be permitted to vote. The loose-leaf binders containing the precinct records and the

duplicate registration record, required by G.S. 163-65(a), shall be kept at all times in a safe place.

For the purpose of receiving registration applications, registrars shall attend the voting places in their precincts only on such days and at such hours as may be fixed by the county board of elections: Provided, the county board of elections shall not require registrars to be present at the voting places for this purpose on any day later than the twenty-first day, excluding Saturdays and Sundays, prior to a primary or election. In its discretion, the county board of elections may require no attendance by registrars at the voting places for the purpose of receiving registration applications.

The county board of elections is authorized to make reasonable rules and regulations, not inconsistent with law and State Board regulations, to insure full-time registration as provided in this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 620 **CHAPTER 364**

AN ACT TO CHANGE THE MAINTENANCE OF EFFORT PROVISION FOR THE PUBLIC SCHOOLS OF ROBESON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. Section 13 of Chapter 605, Session Laws of 1987, as amended by Chapter 986, Session Laws of 1989, reads as rewritten:

"(a) The Robeson County Board of Commissioners shall provide local funding to the Public Schools of Robeson County for the following school years at at least the designated percentage of the average local funding per ADM in the remainder of the State, in accordance with the most recent figures available from the State Board of Education as of January 1 of the year in which the budget is adopted:

1989-90	70%
1990-91	~~75%~~ 75%.
~~1991-92 and thereafter~~	~~80%.~~

(b) Notwithstanding the provisions of subsection (a) of this section, the Robeson County Board of Commissioners for fiscal year 1990-91 shall provide local current expense funding to the Public Schools of Robeson County at at least seventy percent (70%) of the average local funding per ADM in the State based on appropriations, in accordance

with the most recent figures available from the State Board of Education as of January 1 of the year in which the budget is adopted. The progressive percentage increases provided for in subsection (a) of this section shall not begin until fiscal year 1991-92.

(c) Effective July 1, 1991, the Robeson County Board of Commissioners shall appropriate for current expenses and capital outlay each fiscal year to the Public Schools of Robeson County, amounts to be calculated as follows:

(1) The equivalent dollars that would be yielded from the application of a 49 cent (49¢) tax rate per one hundred dollars ($100.00) to the ad valorem tax base of Robeson County (based upon the projected yield per penny).

(2) In the event the 49 cent (49¢) tax rate established in subdivision (1) above does not produce the equivalent dollars that the Robeson County Commissioners appropriated to the Public Schools of Robeson County during fiscal year 1990-91, then the Robeson County Commissioners shall continue to fund the schools at the 1990-91 level until such time that the appropriation is exceeded by the method of calculation as outlined in subdivision (1) above.

(3) The Public Schools of Robeson County may as provided by North Carolina law, transfer monies between Current Expense and Capital Outlay as the needs may dictate. Any transfer of funds between these accounts must occur after their appropriation by the Robeson County Commissioners, and any such transfers must be approved by an affirmative vote of the Robeson County Board of Commissioners.

In those years that the County Ad Valorem Tax Base is revaluated, the new tax rate for schools shall be determined by dividing the prior year Budget Appropriation by the projected revalued yield rate per penny. That rate shall remain in effect until a subsequent revaluation shall require new rates to be calculated. The new Budget Appropriation for the year in which revaluation takes effect, shall be determined by multiplying the new rate times the projected yield per penny after revaluation and adding a two percent (2%) growth factor.

In the event a revaluation results in a decrease in the tax base as compared to the year prior to the year in which revaluation goes into effect, then there shall be no adjustment to the tax rate for schools.

Nothing contained herein shall be interpreted to limit the appropriations made for current expenses or for Capital Outlay by the Robeson County Board of Commissioners to the Public Schools of Robeson County. The Robeson County Board of Commissioners may appropriate any amounts over and above the minimum established by this section."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 634 **CHAPTER 365**

AN ACT TO REPEAL ACTS DIRECTING THE NORTH CAROLINA DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO BUILD A REGIONAL BEACH ACCESS FACILITY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 539 of the 1983 Session Laws and G.S. 113A-134.10 are repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 635 **CHAPTER 366**

AN ACT TO ELIMINATE THE CRIMINAL PENALTY FOR TAKING MIGRATORY GAME BIRDS WITH AN UNPLUGGED OR IMPROPERLY PLUGGED SHOTGUN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-294(m) reads as rewritten:

"(m) Any person who unlawfully takes any migratory game bird with a ~~rifle~~ rifle; ~~or an unplugged or improperly plugged shotgun;~~ or who unlawfully takes any migratory game bird with the aid of live decoys or any salt, grain, fruit, or other bait; or who unlawfully takes any migratory game bird during the closed season or during prohibited shooting hours; or who unlawfully exceeds the bag limits or possession limits applicable to any migratory game bird is guilty of a misdemeanor. In addition to any other penalty prescribed in this Subchapter for the offense in question, any person convicted under this subsection is punishable by a fine of not less than one hundred fifty dollars ($150.00) in addition to any other punishment that the court, in its discretion, may impose."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 659 **CHAPTER 367**

AN ACT TO MAKE AMENDMENTS TO STATUTES GOVERNING NATIONAL GUARD AWARDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 127A-45 reads as rewritten:

"§ *127A-45. North Carolina National Guard State Active Duty Award.*

There is hereby created the North Carolina National Guard State Active Duty Award which shall be a ribbon of appropriate design. This ribbon and appurtenances thereto shall be of a design approved by the Governor or his designated representative. ~~The Adjutant General of North Carolina is authorized to award this ribbon to members of the North Carolina national guard who satisfactorily serve a tour of State active duty on or after July 1, 1974, by order of the Governor and said tour of State active duty having been designated by the Adjutant General of North Carolina as worthy of this award. Said tours of State active duty designated for this award are to be of such nature as to be a distinct and notable service to a community or the State.~~ The Adjutant General of North Carolina may present this ribbon to members of the North Carolina National Guard who, by order of the Governor, satisfactorily serve a tour of State active duty. To be worthy of this award, the nature of the tour of State active duty must have been a distinct and notable service to the State or to a community, as determined by the Adjutant General of North Carolina. On or after July 1, 1991, this award may also be presented to active guard personnel and reserve personnel who satisfactorily participate in tours of State active duty."

Sec. 2. G.S. 127A-44 reads as rewritten:

"§ *127A-44. North Carolina National Guard Commendation Medal.*

There is hereby created the North Carolina National Guard Commendation Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, ~~who shall not be below the grade of general officer,~~ who shall not be below the rank of colonel (O-6), may ~~is authorized to~~ award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina national guard, is eligible for this award."

Sec. 3. Chapter 127A of the General Statutes is amended by adding a new section to read:

"*§ 127A-44.1. North Carolina National Guard Achievement Medal.*

There is hereby created the North Carolina National Guard Achievement Medal which shall be of appropriate design, and a ribbon, together with a rosette or other device to be worn in lieu thereof. This medal and appurtenances thereto shall be of a design approved by the Governor or his designated representative. The Adjutant General of North Carolina or his designated representative, who shall not be below the rank of lieutenant colonel (O-5), may award this medal. Any member or former member of the armed forces discharged under honorable conditions, who distinguishes himself by his example or the performance of a specific act in behalf of the North Carolina National Guard, is eligible for this award."

Sec. 4. Chapter 127A of the General Statutes is amended by adding a new section to read:

"*§ 127A-45.2A. North Carolina National Guard Outstanding Unit Award.*

There is hereby created the North Carolina National Guard Outstanding Unit Award which shall be a streamer, a unit emblem, and a certificate, all of appropriate design as approved by the Governor or his designated representative. The Adjutant General may present this citation to any unit of the North Carolina National Guard distinguishing itself through meritorious achievement or service to the State of North Carolina. The required meritorious service, while of a lesser degree than that required for the award of the North Carolina National Guard Meritorious Unit Citation, must nevertheless have been accomplished with distinction."

Sec. 5. Chapter 127A of the General Statutes is amended by adding a new section to read:

"*§ 127A-45.5A. Other awards.*

The Adjutant General may, from time to time, create such other awards and medals to recognize meritorious service or outstanding achievement. The creation of such awards and medals shall be approved by the Governor. The Governor or his designee shall approve the design of such awards and medals."

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 175 **CHAPTER 368**

AN ACT TO CONSOLIDATE, CLARIFY, AND IMPROVE THE STATUTES RELATING TO RAILROAD/MOTOR VEHICLE SAFETY.

The General Assembly of North Carolina enacts:

Section 1. Part 10 of Article 3 of Chapter 20 of the General Statutes is amended by adding five sections to read:

"*§ 20-142.1. Obedience to railroad signal.*

(a) Whenever any person driving a vehicle approaches a railroad grade crossing under any of the circumstances stated in this section, the driver of the vehicle shall stop within 50 feet, but not less than 15 feet from the nearest rail of the railroad and shall not proceed until he can do so safely. These requirements apply when:

(1) A clearly visible electrical or mechanical signal device gives warning of the immediate approach of a railroad train;

(2) A crossing gate is lowered or when a human flagman gives or continues to give a signal of the approach or passage of a railroad train;

(3) A railroad train approaching within approximately 1500 feet of the highway crossing emits a signal audible from that distance, and the railroad train is an immediate hazard because of its speed or nearness to the crossing; or

(4) An approaching railroad train is plainly visible and is in hazardous proximity to the crossing.

(b) No person shall drive any vehicle through, around, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed, nor shall any pedestrian pass through, around, over, or under any crossing gate or barrier at a railroad crossing while the gate or barrier is closed or is being opened or closed.

(c) When stopping as required at a railroad crossing, the driver shall keep as far to the right of the highway as possible and shall not form two lanes of traffic unless the roadway is marked for four or more lanes of traffic.

(d) Any person who violates any provisions of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence *per se.*

"*§ 20-142.2. Vehicles stop at certain grade crossing.*

The Department of Transportation may designate particularly dangerous highway crossings of railroads and erect stop signs at those crossings. When a stop sign is erected at a highway crossing of a railroad, the driver of any vehicle shall stop within 50 feet but not less than 15 feet from the nearest rail of such grade crossing and shall proceed only upon exercising due care. Any person who violates this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence *per se.*

"*§ 20-142.3. Certain vehicles must stop at railroad grade crossing; placarding certain vehicles.*

(a) Before crossing at grade any track or tracks of a railroad, the driver of any school bus, any motor vehicle carrying passengers for compensation, any property-hauling motor vehicle over 10,000 pounds which is carrying hazardous materials, and any motor vehicle with a capacity of 16 or more persons shall stop the vehicle within 50 feet but not less than 15 feet from the nearest rail of the railroad. While stopped, the driver shall listen and look in both directions along the track for any approaching train and shall not proceed until he can do so safely. Upon proceeding, the driver of the vehicle shall cross the track in a gear that allows the driver to cross the track without changing gears and the driver shall not change gears while crossing the track or tracks.

(b) Except for school buses, the provisions of this section shall not require the driver of a vehicle to stop:

(1) At railroad tracks used exclusively for industrial switching purposes within a business district.

(2) At a railroad grade crossing which a police officer or crossing flagman directs traffic to proceed.

(3) At a railroad grade crossing protected by a gate or flashing signal designed to stop traffic upon the approach of a train, when the gate or flashing signal does not indicate the approach of a train.

(4) At an abandoned railroad grade crossing which is marked with a sign indicating that the rail line is abandoned.

(5) At an industrial or spur line railroad grade crossing marked with a sign reading 'Exempt' erected by or with the consent of the appropriate State or local authority.

(c) It shall be unlawful to transport by motor vehicle upon the highways of this State any hazardous material without conspicuously marking or placarding the motor vehicle on each side and on the rear with the word 'DANGEROUS' or the common or generic name of the article transported or its principal hazard. Additionally, the rear of any such vehicle shall be conspicuously marked with the words 'THIS VEHICLE STOPS AT RAILROAD CROSSINGS' or 'WE STOP AT RR CROSSINGS.' A person violating the provisions of this subsection shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence *per se*.

(d) 'Hazardous materials,' for purposes of this section only, means any hazardous material required to be placarded under 49 C.F.R. § 171-180.

(e) The provisions of this section shall not apply to vehicles subject to Federal Motor Carrier Safety rules adopted by the Division of Motor Vehicles.

"*§ 20-142.4. Moving heavy equipment at railroad grade crossing.*

(a) No person shall operate or move any crawler-type tractor, crane, or roller or any equipment or structure having a normal operating speed of five or less miles per hour upon or across any tracks at a railroad crossing without first complying with this section.

(b) Notice of any intended crossing described in subsection (a) of this section shall be given to a superintendent of the railroad and a reasonable time be given to the railroad to provide protection at the crossing.

(c) Before making any crossing described in subsection (a) of this section, the person operating or moving the vehicle or equipment shall:

(1) Stop the vehicle or equipment not less than 15 feet nor more than 50 feet from the nearest rail of the railroad;

(2) While stopped, shall listen and look both directions along the track for any approaching train and for signals indicating the approach of a train; and

(3) Shall not proceed until the crossing can be made safely.

(d) No crossing described in subsection (a) of this section shall be made when warning is given by automatic signal or crossing gates or a flagman or otherwise of the immediate approach of a railroad train or car.

(e) Subsection (c) of this section shall not apply at any railroad crossing where State or local authorities have determined that trains are not operating during certain periods or seasons of the year and have erected an official sign carrying the legend 'Exempt'.

(f) Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence *per se*.

"*§ 20-142.5. Stop when traffic obstructed.*

No driver shall enter an intersection or a marked crosswalk or drive onto any railroad grade crossing unless there is sufficient space on the other side of the intersection, crosswalk, or railroad grade crossing to accommodate the vehicle he is operating without obstructing the passage of other vehicles, pedestrians, or railroad trains, notwithstanding the indication of any traffic control signal to proceed. Any person who violates any provision of this section shall be guilty of an infraction and punished in accordance with G.S. 20-176. Violation of this section shall not constitute negligence *per se*."

Sec. 2. G.S. 20-142, 20-143, and 20-143.1 are repealed.

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 241 **CHAPTER 369**

AN ACT TO ABOLISH THE NORTH CAROLINA EDUCATION COUNCIL AND TO MAKE CONFORMING TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-104 reads as rewritten:

"*§ 115C-104. Enactment of Compact.*

The Compact for Education is hereby entered into and enacted into law, with all jurisdictions legally joining ~~therein.~~ therein. Pursuant to Article III(9) of the Compact, the commission shall file a copy of its bylaws and any amendment thereto with the Secretary of State of North Carolina. ~~in the~~ The form of the Compact is substantially as follows:

COMPACT FOR EDUCATION.

Article I. Policy and Purpose.

It is the purpose of this Compact to:

(1) Establish and maintain close cooperation and understanding among executive, legislative, professional, educational and lay leadership on a nationwide basis at the state and local levels.

(2) Provide a forum for the discussion, development, crystallization and recommendation of public policy alternatives in the field of education.

(3) Provide a clearinghouse of information on matters relating to educational problems and how they are being met in different places throughout the nation, so that the executive and legislative branches of state government and of local communities may have ready access to the experience and record of the entire country, and so that both lay and professional groups in the field of education may have additional avenues for the sharing of experience and the interchange of ideas in the formation of public policy in education.

(4) Facilitate the improvement of state and local educational systems so that all of them will be able to meet adequate and desirable goals in a society which requires continuous

qualitative and quantitative advances in educational opportunities, methods and facilities.

(5) It is the policy of this Compact to encourage and promote local and state initiative in the development, maintenance, improvement and administration of educational systems and institutions in a manner which will accord with the needs and advantages of diversity among localities and states.

(6) The party states recognize that each of them has an interest in the quality and quantity of education furnished in each of the other states, as well as in the excellence of its own educational systems and institutions, because of the highly mobile character of individuals within the nation, and because of the products and services contributing to the health, welfare and economic advancement of each state which are supplied in significant part by persons educated in other states.

Article II. State Defined.

As used in this Compact, 'state' means a state, territory or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

Article III. The Commission.

(1) The education commission of the states, hereinafter called 'the commission,' is hereby established. The commission shall consist of seven members representing each party state. One of such members shall be the governor; two shall be members of the state legislature selected by its respective houses and serving in such manner as the legislature may determine; and four shall be appointed by and serve at the pleasure of the governor, unless the laws of the state otherwise provide. If the laws of a state prevent legislators from serving on the commission, six members shall be appointed and serve at the pleasure of the governor, unless the laws of the state otherwise provide. In addition to any other principles or requirements which a state may establish for the appointment and service of its members of the commission, the guiding principle for the composition of the membership on the commission from each party state shall be that the members representing such state shall, by virtue of their training, experience, knowledge or affiliations be in a position collectively to reflect broadly the interests of the state government, higher education, the state education system, local education, lay and professional, public and nonpublic educational leadership. Of those appointees, one shall be the head of a

state agency or institution, designated by the governor, having responsibility for one or more programs of public education. In addition to the members of the commission representing the party states, there may be not to exceed 10 nonvoting commissioners selected by the steering committee for terms of one year. Such commissioners shall represent leading national organizations of professional educators or persons concerned with educational administration.

(2) The members of the commission shall be entitled to one vote each on the commission. No action of the commission shall be binding unless taken at a meeting at which a majority of the total number of votes on the commission are cast in favor thereof. Action of the commission shall be only at a meeting at which a majority of the commissioners are present. The commission shall meet at least once a year. In its bylaws, and subject to such directions and limitations as may be contained therein, the commission may delegate the exercise of any of its powers to the steering committee or the executive director, except for the power to approve budgets or requests for appropriations, the power to make policy recommendations pursuant to Article IV and adoption of the annual report pursuant to Article III(10).

(3) The commission shall have a seal.

(4) The commission shall elect annually, from among its members, a chairman, who shall be a governor, a vice-chairman and a treasurer. The commission shall provide for the appointment of an executive director. Such executive director shall serve at the pleasure of the commission, and together with the treasurer and such other personnel as the commission may deem appropriate shall be bonded in such amount as the commission shall determine. The executive director shall be secretary.

(5) Irrespective of the civil service, personnel or other merit system laws of any of the party states, the executive director subject to the approval of the steering committee shall appoint, remove or discharge such personnel as may be necessary for the performance of the functions of the commission, and shall fix the duties and compensation of such personnel. The commission in its bylaws shall provide for the personnel policies and programs of the commission.

(6) The commission may borrow, accept or contract for the services of personnel from any party jurisdiction, the United States, or any subdivision or agency of the

aforementioned governments, or from any agency of two or more of the party jurisdictions or their subdivisions.

(7) The commission may accept for any of its purposes and functions under this Compact any and all donations, and grants of money, equipment, supplies, materials and services, conditional or otherwise, from any state, the United States, or any other governmental agency, or from any person, firm, association, foundation, or corporation, and may receive, utilize and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to paragraph (6) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount and conditions, if any, of the donation, grant, or services borrowed, and the identity of the donor or lender.

(8) The commission may establish and maintain such facilities as may be necessary for the transaction of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(9) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(10) The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year. The commission may make such additional reports as it may deem desirable.

Article IV. Powers.

In addition to authority conferred on the commission by other provisions of the Compact, the commission shall have authority to:

(1) Collect, correlate, analyze and interpret information and data concerning educational needs and resources.

(2) Encourage and foster research in all aspects of education, but with special reference to the desirable scope of instruction, organization, administration, and instructional methods and standards employed or suitable for employment in public educational systems.

(3) Develop proposals for adequate financing of education as a whole and at each of its many levels.

(4) Conduct or participate in research of the types referred to in this article in any instance where the commission finds that such research is necessary for the advancement of the

purposes and policies of this Compact, utilizing fully the resources of national associations, regional compact organizations for higher education, and other agencies and institutions, both public and private.

(5) Formulate suggested policies and plans for the improvement of public education as a whole, or for any segment thereof, and make recommendations with respect thereto available to the appropriate governmental units, agencies and public officials.

(6) Do such other things as may be necessary or incidental to the administration of any of its authority or functions pursuant to this Compact.

Article V. Cooperation with Federal Government.

(1) If the laws of the United States specifically so provide, or if administrative provision is made therefor within the federal government, the United States may be represented on the commission by not to exceed 10 representatives. Any such representative or representatives of the United States shall be appointed and serve in such manner as may be provided by or pursuant to federal law, and may be drawn from any one or more branches of the federal government, but no such representatives shall have a vote on the commission.

(2) The commission may provide information and make recommendations to any executive or legislative agency or officer of the federal government concerning the common educational policies of the states, and may advise with any such agencies or officers concerning any matter of mutual interest.

Article VI. Committees.

(1) To assist in the expeditious conduct of its business when the full commission is not meeting, the commission shall elect a steering committee of 32 members which, subject to the provisions of this Compact and consistent with the policies of the commission, shall be constituted and function as provided in the bylaws of the commission. One fourth of the voting membership of the steering committee shall consist of governors, one fourth shall consist of legislators, and the remainder shall consist of other members of the commission. A federal representative on the commission may serve with the steering committee, but without vote. The voting members of the steering committee shall serve for terms of two years, except that members elected to the first steering committee of the commission shall be elected as follows: 16 for one year and

16 for two years. The chairman, vice-chairman, and treasurer of the commission shall be members of the steering committee and, anything in this paragraph to the contrary notwithstanding, shall serve during their continuance in these offices. Vacancies in the steering committee shall not affect its authority to act, but the commission at its next regularly ensuing meeting following the occurrence of any vacancy shall fill it for the unexpired term. No person shall serve more than two terms as a member of the steering committee; provided that service for a partial term of one year or less shall not be counted toward the two-term limitation.

(2) The commission may establish advisory and technical committees composed of state, local, and federal officials, and private persons to advise it with respect to any one or more of its functions. Any advisory or technical committee may, on request of the states concerned, be established to consider any matter of special concern to two or more of the party states.

(3) The commission may establish such additional committees as its bylaws may provide.

Article VII. Finance.

(1) The commission shall advise the governor or designated officer or officers of each party state of its budget and estimated expenditures for such period as may be required by the laws of that party state. Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states.

(2) The total amount of appropriation requests under any budget shall be apportioned among the party states. In making such apportionment, the commission shall devise and employ a formula which takes equitable account of the populations and per capita income levels of the party states.

(3) The commission shall not pledge the credit of any party states. The commission may meet any of its obligations in whole or in part with funds available to it pursuant to Article III(7) of this Compact, provided that the commission takes specific action setting aside such funds prior to incurring an obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it pursuant to Article III(7) thereof, the commission shall not incur any obligation prior

to the allotment of funds by the party states adequate to meet the same.

(4) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established by its bylaws. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant, and the report of the audit shall be included in and become part of the annual reports of the commission.

(5) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(6) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

Article VIII. Eligible Parties' Entry into and Withdrawal.

(1) This Compact shall have as eligible parties all states, territories, and possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. In respect of any such jurisdiction not having a governor, the term 'governor,' as used in this Compact, shall mean the closest equivalent official of such jurisdiction.

(2) Any state or other eligible jurisdiction may enter into this Compact and it shall become binding thereon when it has adopted the same: Provided that in order to enter into initial effect, adoption by at least 10 eligible party jurisdictions shall be required.

(3) Adoption of the Compact may be either by enactment thereof or by adherence thereto by the governor; provided that in the absence of enactment, adherence by the governor shall be sufficient to make his state a party only until December 31, 1967. During any period when a state is participating in this Compact through gubernatorial action, the governor shall appoint those persons who, in addition to himself, shall serve as the members of the commission from his state, and shall provide to the commission an equitable share of the financial support of the commission from any source available to him.

(4) Except for a withdrawal effective on December 31, 1967, in accordance with paragraph (3) of this article, any party state may withdraw from this Compact by enacting a statute

repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

Article IX. Construction and Severability.

This Compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this Compact shall be severable and if any phrase, clause, sentence or provision of this Compact is declared to be contrary to the constitution of any state or of the United States, or the application thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this Compact shall be held contrary to the constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters."

Sec. 2. G.S. 115C-105 is repealed.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 275 **CHAPTER 370**

AN ACT TO REPEAL PAMLICO COUNTY LOCAL MODIFICATION TO SUBDIVISION STATUTE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 98 of the 1977 Session Laws is repealed.

Sec. 2. The repeal effected by this act does not affect any subdivision or conveyance made prior to the effective date of this act.

Sec. 3. This act is effective upon ratification and applies to subdivisions or conveyances initiated after that date.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 584 **CHAPTER 371**

AN ACT TO REQUIRE THE LAW ENFORCEMENT OFFICERS OF THE LOCAL GOVERNMENT LAW ENFORCEMENT UNIT IN WHICH A PRISONER WAS ARRESTED TO PROVIDE TRANSPORTATION TO AND FROM THE ALBEMARLE DISTRICT JAIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-219(c) reads as rewritten:

"(c) If a district confinement facility is established, or if one unit contracts to use the local confinement facility of another, the law-enforcement officers of the ~~contracting units and the custodial personnel of the facility may~~ unit in which the prisoner was arrested shall transport ~~prisoners~~ that prisoner to and from the ~~facility.~~ facility for all purposes."

Sec. 2. This act applies only to the Albemarle District Jail facility in Elizabeth City and to Camden, Pasquotank, and Perquimans Counties, which place prisoners in that facility.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 585 **CHAPTER 372**

AN ACT TO LIMIT THE LOCATION OF NEW ABC STORES IN BRUNSWICK COUNTY TO NO CLOSER THAN SEVEN MILES TO MUNICIPALITIES WITH EXISTING ABC STORES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-801(b) reads as rewritten:

"(b) Location of Stores. -- A local board may choose the location of the ABC stores within its jurisdiction, subject to the approval of the Commission. No new ABC store shall be approved that is less than seven miles from the corporate limits of a municipality in which there is an existing ABC store. In making its decision on a location, the Commission may consider:

(1) Whether the health, safety, or general welfare of the community will be adversely affected; and

(2) Whether the citizens of the community or city in which the proposed store is to be located voted for or against ABC stores in the last election on the question."

Sec. 2. This act applies to Brunswick County only.

Sec. 3. This act is effective upon ratification and expires on July 1, 1992.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 586 **CHAPTER 373**

AN ACT TO PROVIDE FOR A REFERENDUM IN BRUNSWICK COUNTY ON THE QUESTIONS OF CHANGING THE TERMS

OF OFFICE OF THE BRUNSWICK COUNTY BOARD OF COMMISSIONERS AND THE BRUNSWICK COUNTY BOARD OF EDUCATION FROM FOUR YEARS TO TWO YEARS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 444, Session Laws of 1977, as amended, is further amended by adding a new section to read:

"Sec. 2.1. In 1992, the members of the board of commissioners up for election shall be elected to two-year terms. In 1994 and biennially thereafter, all members of the board of commissioners shall be elected to two-year terms."

Sec. 2. Chapter 443, Session Laws of 1977, as amended, is further amended by adding a new section to read:

"Sec. 2.1. In 1992, the members of the board of education up for election shall be elected to two-year terms. In 1994 and biennially thereafter, all members of the board of education shall be elected to two-year terms."

Sec. 3. Sections 1 and 2 of this act shall only become effective if approved by the qualified voters of Brunswick County. The Brunswick County Board of Elections shall hold a referendum on the question on the Tuesday after the first Monday in November of 1991. The question on the ballot shall be:

"VOTE FOR ONLY ONE CHOICE

1. [] FOR election of the Brunswick County Board of Commissioners and the Brunswick County Board of Education for two-year terms.
2. [] FOR election of the Brunswick County Board of Commissioners and the Brunswick County Board of Education for four-year terms."

The election shall be conducted in accordance with Chapter 163 of the General Statutes.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 607 **CHAPTER 374**

AN ACT CHANGING THE METHOD OF ELECTING THE BOARD OF COMMISSIONERS FOR THE TOWN OF WILLIAMSTON.

The General Assembly of North Carolina enacts:

Section 1. The Williamston Board of Commissioners shall consist of five members elected in nonpartisan plurality elections for

terms of two years. Elections shall be held at the time provided by State law and, except as otherwise provided in this act, shall be conducted according to general State law.

Sec. 2. Beginning with the 1991 election, two commissioners shall be elected from each of the two districts described in Section 3, and one commissioner shall be elected from the town at large. Only the voters residing in a district may vote on the two commissioners for that district, and only persons residing in a district shall be eligible to be candidates for the two offices representing the district. All voters of the town may vote for the at-large commissioner, and any eligible resident of the town may be a candidate for that office.

Sec. 3. The election districts are as follows:

District 1 -- All of the town within the following line running clockwise from the point where Haughton Street (N.C. Highway 125) intersects with the town limits on the north side of town: South on Haughton to Williams Street, east on Williams to Park Street, south on Park to U.S. Highway 17 bypass, west on the bypass to Washington Street, north on Washington to Carolina Avenue, northwest on Carolina to Pinecrest, northeast on Pinecrest to Hanover, northwest on Hanover to Hyland Avenue, southwest on Hyland to Brownlow Avenue, northwest on Brownlow to Main Street, west on Main to Edgelee Street, northwest on Edgelee to Weaver Drive, west on Weaver to Victoria Street, south on Victoria to First Street, west on First to McCasky Road, south on McCasky to Main Street, west on Main to U.S. Highway 64, west on 64 to the town limits, and north and northeast along the town limits to the starting point.

District 2 -- All of the town not included within District 1, including the area annexed in 1990 west of the previous town limits.

Sec. 4. Following each federal census and each annexation, the Board of Commissioners may, by adoption of a resolution, alter the district boundaries if necessary to comply with the requirements of equal representation. In making such changes, the board shall follow the procedures in Chapters 160A and 163 of the General Statutes, except as modified by this act.

Sec. 5. Vacancies on the board shall be filled as provided by general State law. If a vacancy occurs in one of the four district commissioner offices, the person appointed to fill the vacancy must reside in the district for which the vacancy occurred.

Sec. 6. The Mayor shall continue to be elected as a separate office by all the voters of the town, and shall continue to serve a term of two years.

Sec. 7. Chapter 90 of the Session Laws of 1947 is repealed.

Sec. 8. Chapter 883 of the Session Laws of 1989, which purported to change the method of electing town commissioners but

which never took effect because it was not precleared under section 5 of the Voting Rights Act, is also repealed.

Sec. 9. Because Martin County is subject to section 5 of the federal Voting Rights Act of 1965, this act must be precleared by the United States Attorney General before it may take effect. Implementation of the new election method, and the filing of candidates for the 1991 town election, shall be as follows, depending upon the date this act is precleared:

(a) If the act is not precleared before filing of candidates under the present election system opens on July 5, 1991, notices of candidacy shall be accepted pursuant to the present election system.

(b) If the act is precleared between July 5 and July 22, 1991, the date G.S. 163-294.2(c)(1) provides for filing to open under the election system established by the act, the board of elections shall offer candidates who have already filed by that time the choice of receiving a refund of the filing fee or refiling a notice of candidacy under the new election system. Otherwise, filing under the new election system shall proceed according to G.S. 163-294.2(c)(1).

(c) If the act is precleared after July 22, 1991, but by August 30, 1991, filing of candidates shall open at noon on the second business day after notice of preclearance is received and shall continue for two weeks. The board of elections shall offer each person who already filed a notice of candidacy the choice of receiving a refund of the filing fee or refiling under the new election system. The board of elections shall publish notice of the new filing period as soon as possible after it is notified of preclearance and shall notify and encourage the news media to publicize the reopening of filing.

(d) If the act is not precleared until after August 30, 1991, the existing at-large election method shall be used for the 1991 election and the new election method established by this act shall be implemented beginning with the 1993 town election.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 620 **CHAPTER 375**

AN ACT TO REQUIRE THE RECYCLING OF LEAD-ACID BATTERIES AND TO OTHERWISE REGULATE THE DISPOSAL OF LEAD-ACID BATTERIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.10(f) reads as rewritten:

"(f) In accordance with the following schedule, no person shall knowingly dispose of the following special wastes in landfills:

~~(1) Lead-acid batteries, after 1 January 1991. Lead-acid batteries also shall not be disposed of in any waste-to-energy facility after 1 January 1991. To encourage proper collection and recycling, all persons who sell lead-acid batteries at retail shall accept used lead-acid batteries as trade-ins for new lead-acid batteries.~~

(2) Used oil, after 1 October 1990.

(3) Yard trash, after 1 January 1993, except in landfills classified for such use under rules adopted by the Commission. Yard trash that is source separated from solid waste may be accepted at a solid waste disposal area where the area provides and maintains separate yard trash composting facilities.

(4) White goods, after 1 January 1991."

Sec. 2. Article 9 of Chapter 130A of the General Statutes is amended by adding a new Part to read:

"Part 2C. Lead-Acid Batteries.

"*§ 130A-309.70. Landfilling and incineration of lead-acid batteries prohibited; delivery for recycling.*

(a) No person shall knowingly place or dispose of a used lead-acid battery in a landfill, incinerator, or in any waste-to-energy facility. Any person may deliver a lead-acid battery to a battery retailer or wholesaler, or to a secondary lead smelter, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(b) No battery retailer shall knowingly place or dispose of a used lead-acid battery in a landfill, incinerator, or waste-to-energy facility. Any battery retailer may deliver a used lead-acid battery to the agent of a battery wholesaler or a secondary lead smelter, to a battery manufacturer for delivery to a secondary lead smelter, or to a collection or recycling facility authorized under this Chapter or by the United States Environmental Protection Agency.

(c) Any person who knowingly places or disposes of a lead-acid battery in violation of this section shall be assessed a civil penalty of not more than fifty dollars ($50.00) per violation. Each battery improperly disposed of shall constitute a separate violation.

"*§ 130A-309.71. Retailers required to accept lead-acid batteries for recycling; posting of notice required.*

(a) A person who sells or offers for sale lead-acid batteries at retail in this State shall accept from customers, at the point of transfer or sale, used lead-acid batteries of the type and in a quantity at least

equal to the number of new batteries purchased, if offered by customers.

(b) A person who sells or offers for sale lead-acid batteries at retail in this State shall post written notice which must be at least 8 1/2 inches by 11 inches in size and must contain the universal recycling symbol and the following language:

(1) 'It is illegal to improperly dispose of a motor vehicle battery or other lead-acid battery.'

(2) 'Recycle your used batteries.'

(3) 'State law requires us to accept used motor vehicle batteries or other lead-acid batteries for recycling in exchange for new batteries purchased.'

(c) Any person who fails to post the notice required by subsection (b) of this section after receiving a written warning from the Department to do so shall be assessed a civil penalty of not more than fifty dollars ($50.00) per day for each day the person fails to post the required notice.

"*§ 130A-309.72. Wholesalers required to accept lead-acid batteries.*

(a) No person selling new lead-acid batteries at wholesale shall refuse to accept from customers at the point of transfer, used lead-acid batteries of the type and in a quantity at least equal to the number of new batteries purchased, if offered by customers. A person accepting batteries in transfer from a battery retailer shall be allowed a period not to exceed 90 days to remove batteries from the retail point of collection.

(b) Any person who violates this section shall be assessed a civil penalty of fifty dollars ($50.00) per violation. Each battery refused by a wholesaler or not removed from the retail point of collection within 90 days shall constitute a separate violation.

"*§ 130A-309.73. Inspections of battery retailers authorized; construction of this Part.*

(a) The Department may inspect any place, building, or premise subject to the provisions of G.S. 130A-309.71. The Department may issue warnings to persons who fail to comply with the provisions of this Part.

(b) The provisions of this Part shall not be construed to prohibit any person who does not sell lead-acid batteries from collecting and recycling such batteries."

Sec. 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise appropriated or available to the Department.

Sec. 4. This act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 652 **CHAPTER 376**

AN ACT TO MODIFY THE MANNER OF FILLING VACANCIES IN THE OFFICE OF THE REGISTERS OF DEEDS OF CAMDEN, CHOWAN, PASQUOTANK, AND PERQUIMANS COUNTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-5 as amended by Chapter 60 of the 1991 Session Laws reads as rewritten:

"*§ 161-5. Vacancy in office.*

(a) Repealed by Session Laws 1991, c. 60, s. 1.

~~(a)~~ (a1) When a vacancy occurs from any cause in the office of register of deeds, the board of county commissioners shall fill such vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. If the register of deeds was elected as the nominee of a political party, the board of county commissioners shall consult the county executive committee of that political party before filling the vacancy and shall appoint the person recommended by that committee, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(a2) When a vacancy occurs from any cause in the office of register of deeds, the board of commissioners shall fill the vacancy by the appointment of a successor for the unexpired term, who shall qualify and give bond as required by law. Counties subject to this subsection are: Camden, Chowan, Pasquotank, and Perquimans.

(b) In the interim between a vacancy in the office of register of deeds and the appointment and qualification of a successor register of deeds, under the provisions of subsection (a), any incumbent assistant or deputy register of deeds appointed under G.S. 161-6 prior to the vacancy shall continue to hold office as assistant or deputy registers of deeds until discharged or otherwise lawfully relieved of office by the lawful successor to the office of register of deeds."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 664 **CHAPTER 377**

AN ACT TO REMOVE CERTAIN PROPERTY FROM THE CORPORATE LIMITS OF THE TOWN OF FARMVILLE.

The General Assembly of North Carolina enacts:

Section 1. All the area included in the following property description is removed from the corporate limits of the Town of Farmville:

BEGINNING at a concrete monument, said monument being a corner of the Town of Farmville corporate limits and being located on the northern property line of the William A. Martin, Jr. lot, said line also being the southern property line of Lot No. 13 of Allen Acres Subdivision having North Carolina Grid Coordinates (Y = 676,535.815 and X = 2,423,189.922); thence from the point of beginning and leaving the existing corporate limit line along the northern property line between William A. Martin, Jr., and the southern property line of Lot No. 13 of Allen Acres Subdivision S 61°-48'-54" W 67.090' to an iron stake, said stake being located at the northwest corner of William A. Martin, Jr. lot, and also being the southern most corner of Lot No. 13 of Allen Acres Subdivision and said corner also being located in the eastern property line of R. T. Monk Subdivision; cornering, thence along the property line between William A. Martin, Jr., and the R. T. Monk Subdivision S 27°-40`-36" E 394.381' to a point, said point being located on the existing corporate limit line of the Town of Farmville; cornering, thence with the existing corporate limits of the Town of Farmville N 18°-02`-13" W 400.633' to the POINT OF BEGINNING containing 0.30 acres.

Sec. 2. Any Town of Farmville taxes levied against the above described property since its annexation are declared null and void.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 711 **CHAPTER 378**

AN ACT TO REINSTATE THE ORIGINAL NAME OF SR 1632 IN CRAVEN COUNTY AS "NEW ROAD".

The General Assembly of North Carolina enacts:

Section 1. The name of SR 1632 in Craven County is changed from "Back Woods Road" to its original name "New Road".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 720 **CHAPTER 379**

AN ACT TO EXTEND THE CITY OF DURHAM'S FAIR HOUSING ORDINANCE TO COVER DISCRIMINATION BASED ON FAMILIAL STATUS.

The General Assembly of North Carolina enacts:

Section 1. Section 121 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, reads as rewritten:

"Sec. 121. Equal Housing. The City Council may adopt ordinances prohibiting discrimination on the basis of race, color, sex, religion, national origin, age, familial status, or handicap in real estate transactions. Such ordinances may regulate or prohibit any act, practice, activity or procedure related, directly or indirectly to the sale or rental of public or private housing, which affects or may tend to affect the availability or desirability of housing on an equal basis to all persons; may provide that violations constitute a misdemeanor, and shall be punishable under G.S. 14-4; may subject the offender to civil penalties; and may provide that the City may enforce the ordinances by application to the General Court of Justice, Superior Court Division, for appropriate legal and equitable remedies, including but not limited to, mandatory and prohibitory injunctions and orders of abatement, attorney's fees and not more than one thousand dollars ($1,000) punitive damages, and the court shall have jurisdiction to grant such remedies."

Sec. 2. Section 122(4) of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, reads as rewritten:

"(4) With respect to discrimination based upon religion, to housing accommodations owned and operated for other than a commercial purpose by a religious organization, association, or society, or any nonprofit institution or organization operated, supervised, or controlled by or in conjunction with a religious organization, association, or society, the sale, rental or occupancy of such housing accommodation being limited or preference being given to persons of the same religion, unless membership in such religion is restricted because of race, color, national origin, sex, handicap, familial status, or age;"

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 722 **CHAPTER 380**

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM RELATING TO DEVELOPMENT PLANS AND SITE PLANS.

The General Assembly of North Carolina enacts:

Section 1. Section 92 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding a new sentence at the end to read:

"In approving development plans and site plans, the City may require that street and utility rights-of-way be dedicated to the public, that necessary street and utility improvements be constructed, and that provision be made for recreational space and facilities where appropriate."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 724 **CHAPTER 381**

AN ACT TO CLARIFY THE LAW PERTAINING TO IMMUNIZATION REQUIREMENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-155.1(a) reads as rewritten:

"(a) Except as otherwise provided in this subsection, ~~No~~ no person shall attend a college or university, whether public, private, or religious, ~~excluding educational institutions established under Chapter 115D of the General Statutes, excluding students attending night classes only, and excluding students matriculating in off-campus courses at either public or private institutions,~~ unless a certificate of immunization or a record of immunization from a high school located in North Carolina indicating that the person has received immunizations required by G.S. 130A-152 is presented to the college or university. This section shall not apply to educational institutions established under Chapter 115D of the General Statutes, or to students registering only in off-campus courses, or to students attending night or weekend classes only, or to students taking a course load of four credit hours or less and residing off campus. The person shall present a certificate or record of immunization on or before ~~the first day of matriculation~~ the date the person first registers for a quarter or semester during which the student will reside on the campus or first registers for more than four credit hours to the registrar of the college

or ~~university,~~ university. ~~provided, however, that if a college or university obtains the certificate of immunization from a high school located in North Carolina, the requirements of this section are satisfied.~~ If a certificate or record of immunization is not in the possession of the college or university on the ~~first day of matriculation,~~ date of first registration, the college or university shall present a notice of deficiency to the person. The person shall have 30 calendar days from the date of the person's first registration ~~day of attendance~~ to obtain the required immunization. ~~If the administration of vaccine in a series of doses given at medically approved intervals requires a period in excess of 30 calendar days, additional days upon certification by a physician may be allowed to obtain the required immunization.~~ If immunization requires a series of doses and the period necessary to give the vaccine at standard intervals extends beyond the date of the first registration, the student shall be allowed to attend the college or university upon written certification by a physician that the standard series is in progress. The physician shall state the time period needed to complete the series. Upon termination of ~~30 calendar days or the extended period,~~ this time period, the college or university shall not permit the person to ~~attend the school~~ continue in attendance unless the required immunization has been obtained."

Sec. 2. This act is effective upon ratification and applies to persons registering for college or university on or after that date.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 730 **CHAPTER 382**

AN ACT TO ALLOW PASQUOTANK COUNTY TO LEASE CERTAIN LAND FOR TWENTY-FIVE YEARS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 160A-272, the County of Pasquotank may lease land it owns for a period of 25 years to Regional Medical Services, Inc., a nonprofit corporation of Albemarle Hospital. Regional Medical Services, Inc., may sublease this property for the same term of 25 years.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 737 **CHAPTER 383**

AN ACT TO AMEND THE CHARTER OF THE CITY OF WILMINGTON WITH RESPECT TO PROPERTY PURCHASES BY THE CITY MANAGER.

The General Assembly of North Carolina enacts:

Section 1. Chapter 495, Session Laws of 1977, being the Charter of the City of Wilmington, as amended, is amended by adding a new Section 8.5 to read:

"Sec. 8.5. Purchase of real property by the city manager. The city council may delegate authority to the city manager to purchase real property or interests in real property, provided:

(a) The money for the purchase of such real property or interest in real property shall be available in the then current budget; and

(b) The city manager, within 45 days following such purchase, shall submit to the city council a written report setting forth the names of the persons from whom such property or property interest is purchased, a general description of the property or interest in property acquired, the purchase price paid therefor, and the intended use of such property or interest in property."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 797 **CHAPTER 384**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF AUTRYVILLE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Autryville is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF AUTRYVILLE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Autryville, North Carolina, in Sampson County and the inhabitants therof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Autryville,' also referred to as the 'Town.'

"Sec. 1.2. *Powers.* The Town has and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the Town of Autryville specifically by this Charter or upon municipal

corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Sampson County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Mayor and Board of Commissioners.* The Mayor and the Board of Commissioners, hereinafter referred to as the 'Board,' comprise the governing body of the Town.

"Sec. 2.2. *Board of Commissioners; Composition; Terms of Office.* The Board is composed of five Commissioners elected by all the qualified voters of the Town for staggered terms of four years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the Town for a term of two years or until a successor is elected and qualified. The Mayor is the official head of the Town government and presides at meetings of the Board; has the right to vote only when there is an equal division on any question or matter before the Board; and exercises the powers and duties conferred by law or as directed by the Board.

"Sec. 2.4. *Mayor Pro Tempore.* At the organizational meeting following each regular municipal election, the Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in that capacity until the organizational meeting following the next regular municipal election, despite the contrary provisions of G.S. 160A-70.

"Sec. 2.5. *Meetings.* In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Voting Requirements; Quorum.* Official actions of the Board and all votes are taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 shall apply.

"Sec. 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Commissioners are

as provided by general law. Vacancies that occur in any elective office of the Town shall be filled for the remainder of the unexpired term.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of the State. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Election of Board of Commissioners.* The Commissioners serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Three Commissioners shall be elected at the regular municipal election in 1991 and every four years thereafter. Two Commissioners shall be elected at the regular municipal election in 1993 and every four years thereafter.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in each regular municipal election.

"Sec. 3.4. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by law.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. *Form of Government.* The Town shall operate under the mayor-council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Clerk.* The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board; to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Board may direct.

"Sec. 4.3. *Tax Collector.* The Board shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Sec. 4.4. *Town Attorney.* The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials and perform other duties required by law or as the Board may direct.

"Sec. 4.5. *Other Administrative Officers and Employees.* The Board may authorize other positions and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. ALCOHOLIC BEVERAGES.

"Sec. 5.1. *Sale of Alcoholic Beverages Prohibited.* It shall be a misdemeanor for any person to sell spirituous or fermented liquors within one mile of the corporate limits of the Town, as provided in Section 18 of Chapter 191, Private Laws of 1891."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Autryville and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 191, Private Laws of 1891, except for Section 18

Chapter 540, Public-Local Laws of 1937

Chapter 70, Session Laws of 1975.

Sec. 5. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 6. All existing ordinances, resolutions, and other provisions of the Town of Autryville not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 7. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies shall be abated or otherwise affected by this act.

Sec. 8. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 10. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 819 **CHAPTER 385**

AN ACT TO AMEND THE ACT REGULATING THE BRUNSWICK COUNTY AIRPORT COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. The title of Chapter 411 of the 1961 Session Laws reads as rewritten:

"AN ACT AUTHORIZING THE CITY OF SOUTHPORT, ~~THE TOWN OF BOILING SPRINGS LAKE,~~ THE TOWN OF YAUPON BEACH, THE TOWN OF LONG BEACH, AND BRUNSWICK COUNTY TO ESTABLISH AN AIRPORT COMMISSION, WHICH SHALL BE KNOWN AS THE BRUNSWICK COUNTY AIRPORT COMMISSION, WHICH COMMISSION SHALL BE VESTED WITH THE POWER OF EMINENT DOMAIN AND THE POWER TO ISSUE BONDS OR OTHER SECURITIES OR OBLIGATIONS FOR THE PURPOSE OF PROVIDING FUNDS FOR THE ACQUISITION OF LANDS, CONSTRUCTION AND OPERATION OF SAID AIRPORT FACILITY TOGETHER WITH ALL POWERS AS SET OUT IN CHAPTER 63 OF THE GENERAL STATUTES OF NORTH CAROLINA."

Sec. 2. Section 1 of Chapter 411 of the 1961 Session Laws reads as rewritten:

"Section 1. There is hereby created a board to be known as the Brunswick County Airport Commission whose membership shall consist of Southport, ~~Boiling Springs Lake,~~ Yaupon Beach, Long Beach, and Brunswick County and which board is hereby constituted a body politic and corporate. The said board shall be comprised of seven ~~members~~ members, four of whom shall be appointed by the Board of County Commissioners of Brunswick County and one of whom shall be appointed by each member town, all of whom shall be experienced businessmen with no qualifications as to residence. The membership of said board shall be named as provided for in Chapter 63 of the General Statutes of North Carolina. The members of said board shall receive no compensation per diem or otherwise, but shall be allowed and paid actual expenses incurred in the transaction of business and at the instance of the said Commission. In the event that either the Aldermen of the City of Southport, the Commissioners of the Town ~~of Boiling Springs Lake~~ of Yaupon Beach, the Commissioners of the Town of Long Beach, or the Brunswick County Commissioners do not deem it advisable or any one or two of said municipal bodies do not enter into an agreement to set up said Airport Commission as provided for under Chapter 63 of the General Statutes of North Carolina, then in such event the municipality or county

desiring to create such a commission may do so having all powers herein conferred with the right and privilege of calling such commission in the name of the particular municipality and/or county government."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 897 **CHAPTER 386**

AN ACT TO LIMIT REFERRALS OF PROPERTY DAMAGE REPAIR WORK BY ADJUSTERS AND AGENTS.

The General Assembly of North Carolina enacts:

Section 1. Article 33 of Chapter 58 of the General Statutes is amended by adding a new section to read:

"*§ 58-33-76. Referral of business to repair source; prohibitions.*

(a) No adjuster or appraiser shall recommend the use of a particular service or source for the repair of property damage without clearly informing the claimant that the claimant is under no obligation to use the recommended repair service.

(b) No adjuster or appraiser shall accept any gratuity or other form of remuneration from a repair service for recommending that repair service to a claimant.

(c) Any person who violates this section is subject to the provisions of G.S. 58-2-70 and G.S. 58-33-45."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 939 **CHAPTER 387**

AN ACT TO MAKE IT CLEAR THAT A MEDIATION OR OTHER DISPUTE SETTLEMENT CENTER IS NOT A COLLECTION AGENCY AND THEREFORE NOT SUBJECT TO REGULATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-70-15 reads as rewritten:

"*§ 58-70-15. Definition of collection agency and collection agency business.*

'Collection agency' means and includes all persons, firms, corporations, and associations directly or indirectly engaged in soliciting, from more than one person, firm, corporation or

association, delinquent claims of any kind owed or due or asserted to be owed or due the solicited person, firm, corporation or association, and all persons, firms, corporations and associations directly or indirectly engaged in the asserting, enforcing or prosecuting of those claims.

'Collection agency' shall include:

(1) Any person, firm, corporation or association who shall procure a listing of delinquent debtors from any creditor and who shall sell such listing or otherwise receive any fee or benefit from collections made on such listing; and

(2) Any person, firm, corporation or association which attempts to or does transfer or sell to any person, firm, corporation or association not holding the permit prescribed by this Article any system or series of letters or forms for use in the collection of delinquent accounts or claims which by direct assertion or by implication indicate that the claim or account is being asserted or collected by any person, firm, corporation, or association other than the creditor or owner of the claim or demand; provided that no bond shall be required of any such collection agency if it does not collect any money from the debtor nor hold itself out as being authorized to receive payment of all or any part of such debt.

'Collection agency' does not mean or include:

(1) Regular employees of a single creditor;

(2) Banks, trust companies, or bank-owned, controlled or related firms, corporations or associations engaged in accounting, bookkeeping or data processing services where a primary component of such services is the rendering of statements of accounts and bookkeeping services for creditors;

(3) Mortgage banking companies;

(4) Savings and loan associations;

(5) Building and loan associations;

(6) Duly licensed real estate brokers and agents when the claims or accounts being handled by the broker or agent are related to or are in connection with the broker's or agent's regular real estate business;

(7) Express, telephone and telegraph companies subject to public regulation and supervision;

(8) Attorneys-at-law handling claims and collections in their own name and not operating a collection agency under the management of a layman;

(9) Any person, firm, corporation or association handling claims, accounts or collections under an order or orders of any court; ~~or~~

(10) A person, firm, corporation or association which, for valuable consideration purchases accounts, claims, or demands of another, which such accounts, claims, or demands of another are not delinquent at the time of such purchase, and then, in its own name, proceeds to assert or collect the accounts, claims or demands;

(11) 'Collection agency' shall not include any person, firm, corporation or association attempting to collect or collecting claims of a business or businesses owned wholly or substantially by the same person or persons operating such collection ~~agency.~~ agency;

(12) Any nonprofit tax exempt corporation organized for the purpose of providing mediation or other dispute resolution services."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

H.B. 996 **CHAPTER 388**

AN ACT TO COORDINATE THE EFFECTIVE DATE OF CHANGED STATE MEDICAID REIMBURSEMENT AMOUNTS WITH THE DATE FOR WHICH THE CHANGE IS APPROVED BY FEDERAL ADMINISTRATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 108A-55 reads as rewritten:

"*§ 108A-55. Payments.*

(a) The Department may authorize, within appropriations made for this purpose, payments of all or part of the cost of medical and other remedial care for any eligible person when it is essential to the health and welfare of such person that such care be provided, and when the total resources of such person are not sufficient to provide the necessary care. When determining whether a person has sufficient resources to provide necessary medical care, there shall be excluded from consideration the person's primary place of residence and the land on which it is situated, and in addition there shall be excluded real property contiguous with the person's primary place of residence in which the property tax value is less than twelve thousand dollars ($12,000).

(b) Payments shall be made only to intermediate care facilities, hospitals and nursing homes licensed and approved under the laws of the State of North Carolina or under the laws of another state, or to pharmacies, physicians, dentists, optometrists or other providers of health-related services authorized by the Department. Payments may also be made to such fiscal intermediaries and to such prepaid health service contractors as may be authorized by the Department.

(c) The Department shall reimburse providers of services, equipment, or supplies under the Medical Assistance Program in the following amounts:

(1) The amount approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration approves an exact reimbursement amount;

(2) The amount determined by application of a method approved by the Health Care Financing Administration of the United States Department of Health and Human Services, if that Administration approves the method by which a reimbursement amount is determined, and not the exact amount.

The Department shall establish the methods by which reimbursement amounts are determined in accordance with Chapter 150B of the General Statutes. A change in a reimbursement amount becomes effective as of the date for which the change is approved by the Health Care Financing Administration of the United States Department of Health and Human Services.

(d) ~~Provided, no~~ No payments shall be made for the care of any person in a nursing home or intermediate care home which is owned or operated in whole or in part by a member of the Social Services Commission, of any county board of social services, or of any board of county commissioners, or by an official or employee of the Department or of any county department of social services or by a spouse of any such person."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 24th day of June, 1991.

S.B. 312 **CHAPTER 389**

AN ACT TO PROVIDE THAT TEACHERS MAY PARTICIPATE IN THE PUBLIC EMPLOYEES' COMPENSATION PLAN.

The General Assembly of North Carolina enacts:

Section 1. Article 2A of Chapter 147 of the General Statutes reads as rewritten:

"ARTICLE 2A.

"Annuities and Deferred Compensation for Teachers and State Employees.

"§ *147-9.2. Definitions.*

The following words when used in this Article shall have the meanings ascribed to them in this section except when the context clearly indicates a different meaning:

(1) 'Board' shall mean the Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan established pursuant to Chapter 433 of the 1971 Session Laws and G.S. 143B-426.24.

(1a) 'Chief executive officer' shall mean the person or group of persons responsible for the administration of any ~~department or agency of the State of North Carolina, or of a wholly owned institution or instrumentality thereof,~~ employer, or an agent of such chief executive officer duly authorized to enter into the contracts with teachers or State employees referred to in G.S. 147-9.3 and 147-9.4.

(2) 'Employee' shall mean a permanent employee of the State of North Carolina, or ~~if [of]~~ of any of its departments or agencies, or of any of its wholly owned institutions and instrumentalities.

(3) 'Employer' shall mean (i) the State of North Carolina, its departments and agencies, and its wholly owned institutions and ~~instrumentalities.~~ instrumentalities or (ii) a local board of education.

(4) 'Plan' shall mean the North Carolina Public Employee Deferred Compensation Plan.

(5) 'Teacher' shall have the meaning provided in G.S. 135-1(25).

"§ *147-9.3. Annuity contracts; salary deductions.*

Notwithstanding the provisions of G.S. ~~147-62,~~ 143-3.3, and notwithstanding any provision of law relating to salaries or salary schedules of State employees, if the employee be one described in section 403(b) (1) (A) (i) or (ii) of the United States Internal Revenue Code, the chief executive officer of such employee, on behalf of the employer, may enter into an annual contract with the employee which provides for a reduction in salary below the total established compensation or salary schedule for a term of one year. The chief executive officer shall use the funds derived from the reduction in the salary of the employee to purchase a nonforfeitable annuity or retirement income contract for the benefit of said employee. An

employee who has agreed to a salary reduction for this purpose shall not have the right to receive the amount of salary reduction in cash or in any other way except the annuity or retirement income contract. Funds used for the purchase of an annuity or retirement income contract shall not be in lieu of any amount earned by the employee before his election for a salary reduction has become effective. The agreement for salary reduction referred to herein shall be effective under the necessary regulations and procedures adopted by the chief executive officer and on forms prescribed by him. Notwithstanding any other provision of law, the amount by which the salary of an employee is reduced pursuant to this section shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

"*§ 147-9.4. Deferred Compensation Plan.*

Notwithstanding the provisions of G.S. ~~147-62,~~ 143-3.3, and notwithstanding any provision of law relating to salaries or salary schedules of teachers or State employees, the chief executive officer of an employer, on behalf of the employer, may from time to time enter into a contract with ~~an~~ a teacher or employee under which the teacher or employee irrevocably elects to defer receipt of a portion of his scheduled salary in the future, but only if, as a result of such contract, the income so deferred is deferred pursuant to the Plan provided for in G.S. 143B-426.24 or pursuant to some other plan established before ~~1 January 1983,~~ January 1, 1983, and is not constructively received by the teacher or employee in the year in which it was earned, for State and federal income tax purposes. In addition, the income so deferred shall be invested in the manner provided in the applicable Plan; however, the teacher or employee may revoke his election to participate and may amend the amount of compensation to be deferred by signing and filing with the Board a written revocation or amendment on a form and in the manner approved by the Board. Any such revocation or amendment shall be effective prospectively only and shall cause no change in the allocation of amounts invested prior to the filing date of such revocation or amendment.

~~An~~ A teacher or employee who has agreed to the deferral of income pursuant to the Plan shall have the right to receive the income so deferred only in accordance with the provisions of the Plan. Funds so deferred shall not be in lieu of any amount earned by the teacher or employee before his election to defer compensation became effective. The agreement to defer income referred to herein shall be effective under such necessary regulations and procedures as are adopted by the

Board, and on forms prepared or approved by it. A teacher or employee who agrees to defer income as provided in this section may authorize payroll deductions for deferral of the income. An employer shall make payroll deduction available for a teacher or employee who authorizes payroll deduction. Notwithstanding any other provisions of law, the amount by which the salary of ~~an~~ a teacher or employee is deferred pursuant to the Plan shall not be excluded, but shall be included, in computing and making payroll deductions for social security and retirement system purposes, if any, and in computing and providing matching funds for retirement system purposes, if any.

Except for the applications of the provisions of G.S. 110-136, and in connection with a court-ordered equitable distribution under G.S. 50-20, the right of ~~an~~ a teacher or employee, who elects to defer income pursuant to the North Carolina Public Employee Deferred Compensation Plan under G.S. 143B-426.24, to benefits that have vested under the Plan, is nonforfeitable. These benefits are exempt from levy, sale, and garnishment, except as provided by this section."

Sec. 2. G.S. 143B-426.24 reads as rewritten:

"*§ 143B-426.24. Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan.*

(a) The Governor may, by Executive Order, establish a Board of Trustees of the North Carolina Public Employee Deferred Compensation Plan, which when established shall be constituted an agency of the State of North Carolina within the Department of Administration. The Board shall create, establish, implement, coordinate and administer a Deferred Compensation Plan for State employees. Until so established, the Board heretofore established pursuant to Executive Order XII dated ~~12 November 1974~~ November 12, 1974, shall continue in effect. Likewise, the Plan heretofore established shall continue until a new plan is established.

(b) The Board shall consist of seven voting members, as follows:

(1) Three persons shall be appointed by the Governor who shall have experience with taxation, finance and investments, and one of whom shall be a State employee;

(2) One member shall be appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives under G.S. 120-121;

(3) One member shall be appointed by the General Assembly upon recommendation of the President of the Senate under G.S. 120- 121;

(4) The State Treasurer, ex officio; and

(5) The Secretary of Administration, ex officio, chairman.

(c) General Assembly appointments shall serve two year terms. A member shall continue to serve until his successor is duly appointed

but a holdover under this provision does not affect the expiration date of the succeeding term. No member of the Board may serve more than three consecutive two year terms.

(d) In case of a vacancy on the Board before the expiration of a member's term, a successor shall be appointed within 30 days of the vacancy for the remainder of the unexpired term by the appropriate official pursuant to subsection (b). Vacancies in legislative appointments shall be filled under G.S. 120-122.

(e) Other than ex officio members, members appointed by the Governor shall serve at his pleasure.

(f) Any ex officio member may designate in writing, filed with the Board, any employee of his department to act at any meeting of the Board from which the member is absent, to the same extent that the member could act if present in person at such meeting.

(g) It shall be the duty of the Board when established to review all contracts, agreements or arrangements then in force relating to G.S. 147-9.2 and Executive Order XII to include, but not be limited to, such contracts, agreements or arrangements pertaining to the administrative services and the investment of deferred funds under the Plan for the purpose of recommending continuation of or changes to such contracts, agreements or arrangements.

(h) It shall be the duty of the Board to devise a uniform Deferred Compensation Plan for teachers and State employees, which shall include a reasonable number of options to the teacher or employee, for the investment of deferred funds, among which may be life insurance, fixed or variable annuities and retirement income contracts, regulated investment trusts, pooled investment funds managed by the Board or its designee, or other forms of investment approved by the Board, always in such form as will assure the desired tax treatment of such funds. The Board may alter, revise and modify the Plan from time to time to improve the Plan or to conform to and comply with requirements of State and federal laws and regulations relating to the deferral of compensation of teachers and public employees generally.

(i) The Board is authorized to delegate the performance of such of its administrative duties as it deems appropriate including coordination, administration, and marketing of the Plan to teachers and employees. Prior to entering into any contract with respect to such administrative duties, it shall seek bids, hold public hearings and in general take such steps as are calculated by the Board to obtain competent, efficient and worthy services for the performance of such administrative duties.

(j) The Board may acquire investment vehicles from any company duly authorized to conduct such business in this State or may establish, alter, amend and modify, to the extent it deems necessary or

desirable, a trust for the purpose of facilitating the administration, investment and maintenance of assets acquired by the investment of deferred funds. Any assets of such investment vehicles or trusts shall remain solely the property and rights of the State subject only to the claims of the State's general creditors.

(k) Members of the Board, who are not officers or employees of the State, shall receive per diem and necessary travel and subsistence in accordance with the provisions of G.S. 138-5, funded as provided in subsection (m) hereof.

(l) All clerical and other services and personnel required by the Board shall be supplied by the Secretary of Administration, funded as provided in subsection (m) hereof.

(m) Investment of deferred funds shall not be unreasonably delayed, and in no case shall the investment of deferred funds be delayed more than 30 days. The Board may accumulate such funds pending investment, and the interest earned on such funds pending investment shall be available to and may be spent in the discretion of the Board only for the reasonable and necessary expenses of the Board. The Secretary of Administration is authorized to prescribe guidelines for the expenditure of such funds by the Board. From time to time as the Board may direct, funds not required for such expenses may be used to defray administrative expenses and fees which would otherwise be required to be borne by teachers and employees who are then participating in the Plan.

(n) A majority of the Board shall constitute a quorum for the transaction of business.

(o) It is intended that the provisions of this Part shall be liberally construed to accomplish the purposes provided for herein."

Sec. 3. This act is effective upon ratification and applies to deferral elections made by teachers on or after the date of ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

S.B. 501 **CHAPTER 390**

AN ACT TO AUTHORIZE DUPLIN COUNTY TO ACQUIRE CERTAIN PROPERTY FOR AN INDUSTRIAL SITE.

Whereas, pursuant to authority granted in Chapter 158 of the General Statutes, Duplin County is engaging in negotiations to locate a local development project;

Whereas, the project is estimated to increase the tax base in Duplin County by twenty percent (20%) and create approximately 175 jobs;

Whereas, the project will be located on approximately 800 acres in Faison Township in Duplin County of which the County has options to purchase 624.62 acres; and

Whereas, as a result of this project, Duplin County will expand sewer and water services to over 100 low-income households; Now, therefore,

Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-7.1(b) is amended by adding a new subdivision to read:

"(6) Duplin County may use the power of eminent domain and the procedure for condemnation by public condemnors set forth in Chapter 40A of the General Statutes to acquire the following described property located in Faison Township, Duplin County for the purpose of locating an industrial park: property lying West of US 117, bounded on the South by SR 1337, bounded on the West by SR 1301 and bounded on the North by Poley Bridge Branch."

Sec. 2. This act applies to Duplin County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

S.B. 612 **CHAPTER 391**

AN ACT TO PROVIDE FOR THE MERGER AND CONSOLIDATION OF THE SCHOOL ADMINISTRATIVE UNITS IN NASH COUNTY AND THE CITY OF ROCKY MOUNT.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to merge the Rocky Mount City and the Nash County School Administrative Units for the purpose of providing a quality education to all students residing therein.

Sec. 2. As used in this act, certain terms are defined as follows:

(1) The term "county board" means the existing Nash County Board of Education.

(2) The term "city board" means the existing Rocky Mount City Board of Education.

(3) The term "county administrative unit" means the geographical territory over which the Nash County Board of

Education currently exercises authority in administering and operating the public schools of said unit.

(4) The term "city administrative unit" means the geographical territory over which the Rocky Mount City Board of Education currently exercises authority in administering and operating the public schools of said unit.

(5) The term "county commissioners" means the Board of County Commissioners of Nash County.

(6) The term "city" means the City of Rocky Mount.

(7) The term "Interim Board" means a separate board of education elected pursuant to this act for the purpose of planning for the operation and administration of all public schools located in the Nash-Rocky Mount School Administrative Unit.

(8) The term "Nash-Rocky Mount Board of Education" means the single administrative body elected pursuant to this act for the purpose of operating and administering all of the public schools of the Nash-Rocky Mount School Administrative Unit.

(9) The term "Nash-Rocky Mount School Administrative Unit" means the geographic territory included in the city administrative unit and the county administrative unit.

Sec. 3. The county administrative unit and the city administrative unit (including that portion of the existing city administrative unit located in Edgecombe County) are hereby merged and consolidated into a single school administrative unit to be known as the "Nash-Rocky Mount School Administrative Unit."

Sec. 4. (a) The effective date of the merger of the county administrative unit and the city administrative unit shall be July 1, 1992.

(b) On July 1, 1992, the Rocky Mount City special school tax district shall cease to exist and the Rocky Mount City special school tax shall be abolished.

Sec. 5. After the effective date of the merger, the Nash-Rocky Mount Board of Education shall operate and administer all of the public schools in the Nash-Rocky Mount School Administrative Unit.

Sec. 6. The Interim Board shall be elected as a body politic and from and after the date it takes office shall assume the authority and responsibility for planning for the operation and administration of all public schools located in the Nash-Rocky Mount School Administrative Unit. The Interim Board shall prepare and submit to the State Board of Education the written plan of merger and consolidation provided for herein. The Interim Board shall meet within 15 days after it takes office for the purpose of organizing and

shall elect a chairman to preside over its meetings. All vacancies occurring in the membership of the Interim Board for whatever reason shall be filled by the remaining members of said board by appointing a member from the voting district in which the vacancy occurred. For the purposes for which the Interim Board is hereby established, it shall have all statutory powers to prepare and submit to the county commissioners all necessary budgets including supplemental budgets. The Interim Board shall expend all funds in conformity with approved budgets.

In addition, from and after the approval of the plan of merger and consolidation, the Interim Board shall have all necessary power and authority to make contracts, hire personnel and adopt policies and administrative procedures, all as the same may relate to all school matters for the school year 1992-93 and for subsequent school years.

Sec. 7. The Interim Board shall consist of 11 members elected from 11 single-member districts by the registered voters of each respective district. No person shall be eligible to file for, or be elected to, the Interim Board or to serve thereon unless he or she is a qualified voter and resident of the district from which such person seeks to be elected.

Sec. 8. (a) The 11 members of the Interim Board shall be elected on a nonpartisan basis at a special election conducted by the Nash County Board of Elections and the Edgecombe County Board of Elections to be held on October 15, 1991, and the runoff election, if required, shall be held on November 5, 1991. Absentee voting shall begin as soon as practicable under a timetable established jointly by the Nash County Board of Elections and the Edgecombe County Board of Elections. The Interim Board shall take office on November 11, 1991. All members of the county board or city board holding such office on the date this act is precleared may become candidates for the Interim Board without resigning their office. In the event any member of the Nash County Board of Education is elected to the Interim Board, the General Assembly appoints that person to serve the remainder of the unexpired term on the Nash County Board of Education and that office shall thereafter be considered an appointive office.

(b) A candidate seeking election to the Interim Board shall file notice of candidacy with the Nash County Board of Elections or the Edgecombe County Board of Elections not later than 12:00 o'clock noon on the Friday preceding the fourth Saturday before the special election and not earlier than 12:00 o'clock noon on the Friday preceding the eighth Saturday before the special election.

(c) Except as specifically provided for in this act, the election of members to the Interim Board shall be conducted according to the provisions of G.S. 163-293.

(d) The term of office of each member of the Interim Board elected at the special election shall exist and continue until July 1, 1992, when each member of the Interim Board shall become a member of the Nash-Rocky Mount Board of Education.

Sec. 9. (a) Districts to be used for elections of the Interim Board and for the Nash-Rocky Mount Board of Education shall be as follows:

District 1: All of North Whitakers #1 Precinct. All of North Whitakers #2 Precinct. All of Griffins Precinct. All of Castalia Precinct. All of Battleboro Precinct. That part of Mannings #2 Precinct starting at the intersection of State Highway 1305 and State Highway 1300; thence along State Highway 1300 to its intersection with State Highway 1303; thence along State Highway 1303 to its intersection with a special transport boundary; thence along the special transport boundary to its intersection with the precinct line; thence along the precinct line to the point of origin. That part of Mannings #1 Precinct starting at the intersection of White Creek and the Nash/Franklin County line; thence along White Creek to its intersection with State Highway 1320; State Highway 1320 to State Highway 581, State Highway 581 to State Highway 1306, State Highway 1306 to the Precinct boundary and thence along the precinct boundary to the point of origin.

District 2: All of Bailey Precinct. That part of Jacksons Precinct not contained in District 3. That part of Coopers Precinct not contained in District 4. That part of Rocky Mount #5 Precinct not contained in District 6.

District 3: All of Drywells Precinct. All of Ferrells Precinct. That part of Mannings #1 Precinct not contained in District 1. That part of Jacksons Precinct starting at the intersection of the Tar River and State Highway 1001; thence along State Highway 1001 to its intersection with State Highway 97; thence along State Highway 97 to its intersection with State Highway 1949; thence along State 1949 to its intersection with State Highway 1134 (the precinct line); thence along the precinct line to the point of origin.

District 4: All of Nashville Precinct. That part of Coopers Precinct starting at the intersection of State Highway 1717 and Sapony Creek; thence along State Highway 1717 to its intersection with State Highway 1930; thence along State Highway 1930 to its intersection with State Highway 1756; thence along State Highway 1756 to its intersection with an unnamed creek just south of State Highway 1930 (census Feature H11); thence along the unnamed creek to its

intersection with the precinct line; thence along the precinct to the point of origin. That part of Mannings #2 Precinct not contained in District 1.

District 5: All of Red Oak Precinct. Part of Oak Level Precinct starting at the intersection of State Highway 1145 and State Highway 1700; thence along State Highway 1700 to its intersection with I-95; thence along I-95 to its intersection with State Highway 1707; thence along State Highway 1707 to its intersection with Halifax Road; thence along Halifax Road to its intersection with Old Mill Road; thence along Old Mill Road to its intersection with the precinct line; thence along the precinct line to the point of origin. Part of Stoney Creek #1 Precinct except part described in District 7. Part of Rocky Mount #7 Precinct except part described in District 6.

District 6: That part of Rocky Mount #5 Precinct starting at the intersection of Halifax Road and State Highway 97; thence along State Highway 97 to its intersection with West Tarboro Road; thence along West Tarboro Road to its intersection with the precinct line (county line); thence along the precinct line to its intersection with Halifax Road; thence along Halifax Road to the point of origin. That part of Oak Level Precinct not contained in District 5 or District 8 including that portion of Oak Level Precinct that is noncontiguous. That part of Rocky Mount #6 Precinct south of Maple Creek and bounded by the precinct line. That part of Rocky Mount #7 Precinct starting at the intersection of Halifax Road and the Seaboard Coast Line Railroad; thence along the Seaboard Coast Line Railroad to its intersection with Mansfield Drive; thence along Mansfield Drive to its intersection with Hawthorne Road; thence along Hawthorne Road to its intersection with Gravely Drive; thence along Gravely Drive to its intersection with Woodlawn Road; thence along Woodlawn Road to its intersection with Winstead Avenue; thence along Winstead Avenue to its intersection with Sunset Avenue; thence along Sunset Avenue to its intersection with the precinct line; thence along the precinct line to the point of origin.

District 7: That part of Rocky Mount #1 Precinct that is not contained in District 8. Those parts of Stoney Creek #1 Precinct:

(1) Starting at the intersection of Benvenue Road, Dorches Blvd, and Winstead Avenue Extension; thence along Winstead Avenue Extension to Woodruff Road; thence along Woodruff Road to the precinct boundary; thence along the precinct boundary to its intersection with State Highway 1535; thence along State Highway 1535 to its intersection with Benvenue Road; thence along Benvenue Road to the point of origin; and

(2) Starting at the intersection of State Highway 1536 and State Highway 1535; thence along State Highway 1536 to its intersection with State Highway 48; thence along State Highway 48 to its intersection with the precinct line (Compass Creek); thence along the precinct line to its intersection with State Highway 1535; thence along State Highway 1535 to the point of origin; and

(3) All of Stoney Creek Noncontiguous A and all of Stoney Creek Noncontiguous B.

District 8: That part of Oak Level Precinct north of Bethlehem Road and bounded by the precinct line. Part of Rocky Mount #1 Precinct starting at the intersection of West Thomas Street and Seaboard Coast Line Railroad; thence along Seaboard Coast Line Railroad to its intersection with the Tar River; thence along the Tar River to its intersection with the precinct boundary; thence along precinct boundary to the point of origin. Part of Rocky Mount #2 Precinct except part described in District 9. Part of Rocky Mount #4 Precinct except part described in District 10. Part of Rocky Mount #6 Precinct except part described in District 6.

District 9: Rocky Mount #3 Precinct. That part of Rocky Mount #2 Precinct starting at the intersection of Sunset Ave. and S. Howell Street; thence along S. Howell Street to its intersection with Seaboard Coast Line Railroad; thence along Seaboard Coast Line Railroad to the county line; thence along the county line to its intersection with W. Thomas Street; thence along W. Thomas Street to N. Howell St.; thence along N. Howell St. to the point of origin. That part of 12-2 Precinct starting at the intersection of Tarboro Street and Seaboard Coast Line Railroad; thence along Tarboro Street to its intersection with George Street; thence along George Street to its intersection with Seaboard Coast Line Railroad; thence along Seaboard Coast Line Railroad to the point of origin. That part of 12-5 Precinct that is in the Nash-Rocky Mount School Administrative Unit.

District 10: That part of Rocky Mount #4 Precinct starting at the intersection of Nashville Road and Azalea Street; thence along Azalea Street to its intersection with a special transport boundary; thence along the special transport boundary to its intersection with Graham Street; thence along Graham Street to its intersection with Griffin Street; thence along Griffin Street to its intersection with the special transport boundary; thence along the special transport boundary to its intersection with Raleigh Road; thence along Raleigh Road to its intersection with the precinct boundary; thence along the precinct boundary to the point of origin. That part of 12-1 Precinct starting at the intersection of Tarboro Street and George Street; thence along Tarboro Street to its intersection with Redgate Avenue; thence along

Redgate Avenue to its intersection with Cokey Road; thence along Cokey Road (the precinct boundary) to the point of origin. That part of 12-2 Precinct not contained in District 9.

District 11: That part of 12-1 Precinct that is within the Nash-Rocky Mount School Administrative Unit except that portion that is contained in District 10. That part of 12-2 Precinct that is within the Nash-Rocky Mount School Administrative Unit and that is to the east of Old Wilson Road. That part of 12-4 Precinct that is in the Nash-Rocky Mount School Administrative Unit.

Notwithstanding the description in this subsection, there is excluded from any district any portion of Edgecombe County which is not within the Rocky Mount City School Administrative Unit. Precincts as listed in this act are Voting Tabulation Districts as reported under Public Law 94-171 for the 1990 Federal Census. Census geography is as reported for the 1990 Federal Census.

(b) If the United States Department of Justice fails to preclear this act pursuant to Section 5 of the Voting Rights Act of 1965, the city board and the county board by joint resolution adopted by each are authorized to make any necessary modifications to the election districts described in paragraph (a) or, if preclearance is not obtained by August 5, 1991, to modify the election schedule set forth in Section 8(a) above.

Sec. 10. (a) On July 1, 1992, the Interim Board shall become the Nash-Rocky Mount Board of Education and the members of the Interim Board shall become the members of the Nash-Rocky Mount Board of Education and shall represent the districts from which they were elected in the special election.

(b) The terms of office for each member of the Nash-Rocky Mount Board of Education shall begin on July 1, 1992, and shall expire as follows:

(1) The terms of office for seats 2, 4, 6, 8 and 9 shall expire on the first Monday in December of 1994;

(2) The terms of office for seats 1, 3, 5, 7, 10 and 11 shall expire on the first Monday in December of 1996.

Sec. 11. (a) In the year 1994, and each two years thereafter, the members of the Nash-Rocky Mount Board of Education shall be elected for four-year terms of office on a nonpartisan basis as provided in Chapter 115C and Chapter 163 of the General Statutes, with the results determined in accordance with G.S. 163-293. The runoff election shall be held on the first Tuesday in December. The two Boards of Elections shall adopt a special absentee voting timetable for the runoff. The filing period shall be from noon on the first Friday in July until noon on the first Friday in August. Elections shall be held on the first Tuesday after the first Monday in November. Persons

elected to the Nash-Rocky Mount Board of Education shall take office on the second Monday in December following their election, and the terms of their office shall date and extend from that time.

(b) No person shall be eligible to file for, or be elected to, the Nash-Rocky Mount Board of Education, or to serve thereon, unless he or she is a qualified voter and resident of the district from which he or she seeks to be elected. Candidates shall be voted on by the electors residing in the district from which they seek election.

Sec. 12. The Nash-Rocky Mount Board of Education, by a majority vote of all members present, shall elect a chairman to preside at meetings and a vice-chairman to preside at meetings in the absence of the chairman; the chairman and the vice-chairman shall have a vote on all matters considered by the Nash-Rocky Mount Board of Education. All vacancies occurring in the membership of the Nash-Rocky Mount Board of Education by reason of death, resignation, removal of residence from the district from which elected or for any cause whatsoever, shall be filled by the remaining members of said board by appointing a member from the voting district created by the vacancy for the unexpired term. The Nash-Rocky Mount Board of Education shall have all power and authority as a board of education as herein conferred by the General Statutes on boards of education in general.

Sec. 13. From the date that the Interim Board takes office and until July 1, 1992, the city board and the county board shall continue to exercise all powers and authority with respect to the administration and operation of all existing schools in the administrative unit of each respective board of education, together with all other powers conferred by law except those which are specifically given to the Interim Board.

The financial administration of the existing city board and the existing county board until terminated as herein provided shall be governed by the provisions of the General Statutes and applicable local acts, except that the Interim Board shall have specific authority from the date it takes office to June 30, 1992, to prepare and submit to the county commissioners all necessary budgets, including supplemental budgets, and at the time required by law to prepare and submit to the county commissioners all necessary capital outlay, debt service, and current expense budgets for school purposes, all for and in behalf of the Nash-Rocky Mount Board of Education, notwithstanding the fact that the Nash-Rocky Mount Board of Education shall not assume responsibility for operating and administering the public schools in the Nash-Rocky Mount School Administrative Unit until July 1, 1992.

Sec. 14. When any vacancy occurs on the city board or the county board prior to July 1, 1992, such vacancies shall be filled in the manner now provided by law.

Sec. 15. As of July 1, 1992, when the Nash-Rocky Mount Board of Education assumes all of the authority of the administering and operating all schools in the existing city administrative unit and the existing county administrative unit, all authority and power of the Interim Board, the city board and the county board shall cease and terminate and the same shall be vested in the Nash-Rocky Mount Board of Education which shall control, administer, and operate all of the public schools located in the Nash-Rocky Mount School Administrative Unit.

Sec. 16. Not later than 120 days after it takes office, the Interim Board of Education shall submit to the State Board of Education for the approval of said State Board a written plan of merger and consolidation merging and consolidating the county administrative unit and the city administrative unit. The provisions of the plan shall be consistent with the General Statutes and shall contain, but not be limited to, the following:

(1) The power, authority, and duties of the Nash-Rocky Mount Board of Education with respect to the employment of personnel, the preparation of budgets, and any other related matters which may be particularly applicable to the Nash-Rocky Mount School Administrative Unit not inconsistent with the General Statutes.

(2) The transfer of all funds, contracts, obligations, assets, and liabilities from the county board, the city board, and the Interim Board to the Nash-Rocky Mount Board of Education.

(3) Provisions for a public hearing, which shall have been announced at least 10 days prior to the hearing, on the plan of merger.

(4) Any other condition or prerequisite to merger, together with any other appropriate subject or function that may be necessary for the orderly consolidation and merger of the county administrative unit and the city administrative unit.

Upon the failure of the Interim Board to submit a written plan of merger and consolidation as herein provided, or upon the failure of the State Board to approve prior to June 1, 1992, any plan submitted hereunder by the Interim Board, the State Board shall prepare an approved plan of merger and consolidation for the Nash-Rocky Mount School Administrative Unit to be effective July 1, 1992.

No plan of merger and consolidation shall become effective until approval is granted by the State Board. Upon approval of the State Board of Education, the plan of merger and consolidation shall become final and shall be deemed to have been made by authority of law and shall not be changed or amended except by an act of the

General Assembly. The approved written plan shall be placed in the custody of the Nash-Rocky Mount Board of Education and a copy filed with the Secretary of State.

Sec. 17. (a) The Interim Board and the Nash-Rocky Mount Board of Education shall make their best efforts to achieve a racial balance in student enrollment, within plus or minus 12 percentage points of the systemwide average minority student enrollment at the following schools: Rocky Mount Senior High, Northern Nash Senior High and any new high school within the Nash-Rocky Mount School Administrative Unit, and any middle or junior high school that feeds any of these high schools. A school will be considered to be in substantial compliance with the racial balance objectives of this paragraph if its racial balance is plus or minus 18 percentage points of the systemwide average minority student enrollment.

(b) For all schools other than those covered in subsection (a) of this section, the Nash-Rocky Mount Board of Education will promote reasonable and practical racial balance in the schools, utilizing and preserving neighborhood and voluntary schools to the maximum extent permitted by the Constitution, and consistent with sound educational practices.

(c) Except as set forth in subsections (a) and (b) of this section, neither this act, its implementation, nor any act pursuant to it shall create any legal obligation, or any way alter or modify legal or constitutional obligations of the Nash-Rocky Mount school unit with respect to student attendance patterns beyond those incumbent upon the predecessor school administrative units prior to enactment of this act. Nor shall this act extinguish or alter the rights of any resident of the Nash-Rocky Mount School administrative unit with respect to student assignment as they existed prior to the act.

Sec. 18. (a) Except as otherwise agreed to by the city board and the county board, the title to and ownership of all property of the city board and the county board and the Interim Board, both real and personal of every kind and description, shall be vested in the Nash-Rocky Mount Board of Education; and the city board and the county board and the Interim Board shall execute all deeds and other instruments of conveyance as may be necessary and appropriate to vest record title to and ownership of any property held by them in and to the Nash-Rocky Mount Board of Education on or before July 1, 1992.

(b) All claims and demands of every kind which the city board and county board and the Interim Board may have as of July 1, 1992, shall pass and be transferred to the Nash-Rocky Mount Board of Education, and said board of education shall have the same powers and authority to enforce said claims and demands as the county board and the city board and the Interim Board would have had in the event

of their continued existence. Any obligations and liabilities of the city board and the county board and the Interim Board existing as of July 1, 1992, shall become the obligations of the Nash-Rocky Mount Board of Education as of July 1, 1992, and such obligations and liabilities may be enforced against the Nash-Rocky Mount Board of Education thereafter to the same extent that they might have been enforced against the existing boards had they continued in existence.

Sec. 19. The terms of office of the members of the county board and the city board shall expire on the date of termination of each respective board of education hereunder. All future elections for members to such existing boards are hereby canceled.

Sec. 20. Beginning July 1, 1992, and for each school year thereafter the County Commissioners of Edgecombe County shall appropriate to the Nash-Rocky Mount School Administrative Unit local current expense funds as provided by G.S. 115C-430. In addition, beginning July 1, 1992, and for each school year thereafter, all capital outlay funds coming into the possession of the County Commissioners of Edgecombe County, whether such funds be derived from taxation, the proceeds of bonds or notes, appropriations from profits of the Alcoholic Beverage Control Stores, loans or grants from the State or federal governments, or any agency or subdivision thereof, or from any other source whatsoever, shall be apportioned between the school administrative unit or units serving that portion of Edgecombe County lying outside of the boundaries of the Nash-Rocky Mount School Administrative Unit and the Nash-Rocky Mount School Administrative Unit for that portion of Edgecombe County lying within the boundaries of the Nash-Rocky Mount School Administrative Unit on a per capita basis according to the membership of each unit, and appropriated in conformity with the method set out in G.S. 115C-430 in like manner and to the same extent as if such capital outlay funds were current expense funds.

Sec. 21. (a) The City shall be authorized to appropriate to the Nash-Rocky Mount School Administrative Unit, from funds derived from sources other than ad valorem taxation, funds for the current expense and capital outlay needs of the Nash-Rocky Mount School Administrative Unit as herein provided.

(b) Beginning July 1, 1992, and for each school year thereafter, the City shall appropriate to the Nash-Rocky Mount School Administrative Unit, from funds of the City derived from sources other than ad valorem taxation, an amount equal to any current expenditure differential between Nash and Edgecombe Counties as hereinafter defined. The current expenditure differential for each school year shall be the product of the number of students attending school in the Nash-Rocky Mount School Administrative Unit who

reside within that portion of the City Administrative Unit located in the County with the lower current per pupil expenditure, multiplied by the amount which the current per pupil appropriation made by the Board of Commissioners of the county with the higher current per pupil expenditure to the Nash-Rocky Mount School Administrative Unit exceeds the current per pupil appropriation made by the county with the lower current per pupil expenditure to the Nash-Rocky Mount School Administrative Unit.

(c) The Rocky Mount City Council and the county commissioners shall each appropriate $500,000 per year for 10 consecutive years, beginning July 1, 1992, for school capital improvements within the city of Rocky Mount. In addition, the City shall pay for the extension of all electrical, water, sewer, and natural gas lines to the property line of the Winstead Avenue school site, if such site is used for a new school building.

Sec. 22. If any section, subsection, sentence, clause, phrase, or portion of this act is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed separate, distinct, and an independent provision and such decision shall not affect the remaining portions of this act.

Sec. 23. All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 24. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

S.B. 622 **CHAPTER 392**

AN ACT AUTHORIZING ORANGE COUNTY TO LEVY AN OCCUPANCY TAX AND CHAPEL HILL AND CARRBORO TO INCREASE THEIR MOTOR VEHICLE TAXES.

The General Assembly of North Carolina enacts:

Section 1. Occupancy Tax. (a) Authorization and scope. The Orange County Board of Commissioners may, by resolution, levy a room occupancy tax of up to three percent (3%) on the gross receipts derived from the rental of any room, lodging, or similar accommodation in the county subject to sales tax under G.S. 105-164.4(a)(3).

This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose. This tax is in addition to any State or local sales or occupancy tax.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately on the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The county may, for good cause shown, forgive the civil penalties provided in this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000) and imprisonment not to exceed 30 days.

(e) Use and Distribution of Tax Revenue. The Orange County Board of Commissioners shall decide on the allocation of the revenues collected from this tax annually during its budgeting process. At least ten percent (10%) of the annual revenues shall be used to provide funding for visitor information services and to support cultural events.

The county may contract with nonprofit organizations to undertake or carry out the activities and programs for which the

revenue may be expended. All contracts entered into with nonprofit organizations shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

(f) Repeal. A tax levied under this section may be repealed by resolution adopted by the Orange County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 2. Chapel Hill Motor Vehicle Tax. (a) G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars ($5.00)~~ ten dollars ($10.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar ($1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

(b) This section applies only to the Town of Chapel Hill.

Sec. 3. Carrboro Motor Vehicle Tax. (a) G.S. 20-97(a) reads as rewritten:

"(a) All taxes levied under the provisions of this Article are intended as compensatory taxes for the use and privileges of the public highways of this State, and shall be paid by the Commissioner to the State Treasurer, to be credited by him to the State Highway Fund; and no county or municipality shall levy any license or privilege tax upon any motor vehicle licensed by the State of North Carolina, except that cities and towns other than the City of Durham may levy not more than ~~five dollars ($5.00)~~ ten dollars ($10.00) per year upon any vehicle resident therein, and except that the City of Durham may levy not more than one dollar ($1.00) per year upon any vehicle resident therein. Provided, further, that cities and towns may levy, in addition to the amounts hereinabove provided for, a sum not to exceed fifteen

dollars ($15.00) per year upon each vehicle operated in such city or town as a taxicab."

(b) This section applies only to the Town of Carrboro.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

S.B. 629 **CHAPTER 393**

AN ACT TO EXEMPT UNION COUNTY FROM CERTAIN STATUTORY REQUIREMENTS IN THE CONSTRUCTION OF A COUNTY DETENTION FACILITY AND TO EXEMPT COLUMBUS COUNTY FROM THOSE REQUIREMENTS IN THE CONSTRUCTION OF A NEW SOCIAL SERVICES FACILITY.

Whereas, Union County is in the process of submitting a plan for an indirect-supervision detention facility for review by the State of North Carolina; and

Whereas, an estimate indicates that the completion of this facility under normal circumstances will take a considerable amount of time; and

Whereas, Union County is presently named as a defendant in a class action entitled Huntley v. McGuirt, et al., which involves allegations of overcrowded conditions at the Union County jail; and

Whereas, this lawsuit is presently pending in the United States District Court for the Western District of North Carolina, and may well come to trial within the next three months; and

Whereas, members of the Union County Board of Commissioners have reviewed plans for an indirect-supervision detention facility similar to that proposed for Robeson County, which is to be designed and constructed in less than one year using a concept known as "design and build"; and

Whereas, the members of the Union County Board of Commissioners believe that the immediate construction of an indirect-supervision detention facility would best serve the needs of the citizens of Union County; and

Whereas, Columbus County has been informed by the Department of Human Resources that overcrowded conditions at its social services facility have placed it out of compliance with State standards for office space and facilities, and that failure to correct the deficiencies could result in the withholding of federal and State administrative funds; and

Whereas, the Columbus County Board of Commissioners is cooperating with the Department of Human Resources to bring the county into compliance with State standards by planning the construction of a new social services facility using the "design and build" concept; and

Whereas, the Union and Columbus County Boards of Commissioners have been informed that the concept of "design and build" may conflict with some provisions of Article 8 of Chapter 143 of the General Statutes concerning the letting of public contracts; and

Whereas, Chapter 8 of the 1989 Session Laws exempted the State of North Carolina from certain provisions of Article 8 of Chapter 143 of the General Statutes in order to expedite construction in response to similar overcrowding emergencies; and

Whereas, the Union and Columbus County Boards of Commissioners have requested the passage of an act exempting those counties from meeting certain requirements of Article 8 of Chapter 143 of the General Statutes; and

Whereas, the Union and Columbus County Boards of Commissioners have stated that they will endeavor to comply with the spirit of Article 8 of Chapter 143 of the General Statutes by providing local contractors and minority contractors with an opportunity to bid on portions of the construction projects; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The County of Union may contract for the design and construction of a county detention facility to relieve overcrowding at its current facility without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Sec. 2. The County of Columbus may contract for the design and construction of a county social services facility to remedy overcrowding at its current facility without being subject to the requirements of G.S. 143-128, 143-129, 143-131, and 143-132.

Sec. 3. This act is effective upon ratification and expires July 1, 1992.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

H.B. 406 **CHAPTER 394**

AN ACT TO EXEMPT CERTAIN TRUCKS REQUIRED TO BE INSPECTED UNDER FEDERAL REGULATIONS FROM HAVING TO ALSO BE INSPECTED UNDER THE STATE INSPECTION PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-183.2(a) reads as rewritten:

"(a) Every motor vehicle, trailer, semitrailer, and pole trailer not including trailers of a gross weight of less than 4,000 pounds and house trailers, registered or required to be registered in North Carolina when operated on the streets and highways of this State must display a current approved State or federal inspection certificate as required by the Federal Motor Carrier Safety Regulations at such place on the vehicle as may be designated by the Commissioner, indicating that it has been inspected in accordance with this Part. Gasoline-powered vehicles over 26,001 pounds shall be subject to emission control device and exhaust emission testing required under 20-128.2. Such motor vehicle shall thereafter be inspected and display a current inspection certificate as is required by subsection (b) hereof."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

H.B. 602 **CHAPTER 395**

AN ACT TO PROVIDE THAT IN FILLING A VACANCY ON THE LINCOLN COUNTY AND MACON COUNTY BOARDS OF COMMISSIONERS, THE NOMINEE OF THE PARTY EXECUTIVE COMMITTEE OF THE VACATING MEMBER MUST BE APPOINTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-27.1 reads as rewritten:

"§ *153A-27.1. Vacancies on board of commissioners in certain counties.*

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two

years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Macon, Madison, McDowell, Mecklenburg, Moore, Polk, Randolph, Rockingham, Rutherford, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

H.B. 681 **CHAPTER 396**

AN ACT TO PROVIDE FOR THE ANNEXATION OF CAROLINA MILLS, INC., PROPERTY BY THE TOWN OF VALDESE AFTER A FIXED PERIOD OF TIME.

The General Assembly of North Carolina enacts:

Section 1. Except as provided in Section 2 of this act, no municipality may annex the following described property:

That certain tract of land containing 45.73 acres, bound on the south by the center line of S.R. 1546 (Lovelady Road), on the west by the center line of Sewer Plant Access Road, on the north by remaining lands of Crescent Resources, Inc., and on the east by the westerly right of way margin of a 60' road right of way conveyed by Crescent Resources, Inc., to Carolina Mills, Inc., by instrument recorded in Book 767 at page 1696 in the office of the Register of Deeds for Burke County, as shown on plat survey dated April 24, 1990, marked Rhodhiss Dwg 211; AND BEING a portion of the property conveyed to Crescent Land & Timber Corp. by Duke Power Company by deed recorded in Book 351 at page 236 in the office of the Register of Deeds for Burke County, said land having been conveyed to Western Carolina Power Company by J.A. Goode by deed recorded in Book 4H at page 368 in the office of the Register of Deeds for Burke County.

Sec. 2. Effective June 30, 1998, the corporate limits of the Town of Valdese are extended to include the property described in Section 1 of this act.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

H.B. 787 **CHAPTER 397**

AN ACT TO ALLOW AN ADDITIONAL FOUR YEARS FOR THE ACCUMULATION OF MONEY IN THE NORTH CAROLINA CANDIDATES FINANCING FUND AND TO LIMIT THE APPLICATION OF THAT FUND TO THE RACE FOR GOVERNOR, BEGINNING IN 1996.

The General Assembly of North Carolina enacts:

Section 1. Chapter 1063 of the 1987 Session Laws reads as rewritten:

"CHAPTER 1063

"House Bill 1124

"AN ACT TO LIMIT CAMPAIGN EXPENDITURES AND TO STRENGTHEN PUBLIC FINANCING OF POLITICAL CAMPAIGNS.

"The General Assembly of North Carolina enacts:

"Section 1. Chapter 163 of the General Statutes is amended by adding a new Article to read:

'Article 22C.

'Appropriations from the

North Carolina Candidates Financing Fund.

'§ *163-278.46. Establishment of Candidates Fund; administrative expenses; financing in case of insufficiency.*--There is established in the State Treasury a North Carolina Candidates Financing Fund (Candidates Fund) to be administered by the State Board of Elections (State Board) in which shall be placed money contributed by taxpayers as provided in G.S. 105-163.16(f). If the money in the Candidates Fund is insufficient to fully fund qualifying candidates, available money shall be distributed proportionally.

'§ *163-278.47. Application; eligibility.*--(a) Application. Each candidate for ~~Council of State~~ Governor who seeks grants from the Candidates Fund shall file an application for the grants with the State Board on forms provided by the State Board. The candidate may file an application after being certified as a party's nominee for the office, but not after June 15.

(b) Notice of Other Applicants. By June 30, the State Board shall notify each candidate in a contest of all the applications made by candidates in the same contest.

(c) Eligibility. To be eligible to receive grants from the Candidates Fund, a candidate shall have opposition on the ballot in the general election and shall:

(1) Agree to abide by the expenditure limits provided in G.S. 163-278.48,

(2) Raise qualifying matching contributions equal to five percent (5%) of the expenditure limit. "Qualifying matching contributions" are those from political committees or individuals. They are limited to contributions raised after the candidate's certification as nominee, or raised before his certification but left unspent after certification.

(3) Agree to submit to a postelection audit of the campaign account by the State Board.

'§ *163-278.48. Expenditure limits.*--(a) Limitation Formulas. Any candidate for ~~Council of State~~ Governor who requests grants from the Candidates Fund shall limit total expenditures after certification as party nominee as follows:

~~(1) Governor:~~ One dollar ($1.00) times the number of votes cast for Governor in the last general election in which more than one candidate appeared on the ballot for Governor.

~~(2) Council of State office other than Governor: Fifty cents (50¢) times the number of votes cast for Governor in the last general election in which more than one candidate appeared on the ballot for Governor.~~

'§ *163-278.49. Qualified campaign expenditures.*--A candidate may use the money received from the Candidates Fund under this Article only to further that candidate's election to office through expenditures allowable under North Carolina law.

'§ *163-278.50. Distribution of funds.*--(a) Certification and Notice. The State Board shall review each request for grants from the Candidates Fund and certify by July 15 before the general election whether the candidate is eligible to receive them. The State Board shall notify the candidate of the certification decision in that candidate's case within seven days after the decision is made.

(b) Formula for Distribution. A candidate certified to receive money from the Candidates Fund shall be entitled to distribution of funds on a one-to-one basis for all qualifying matching contributions as defined in G.S. 163-278.47. No candidate, however, shall receive money from the Candidates Fund in excess of half the amount of that candidate's expenditure limit under G.S. 163-278.48.

(c) Reporting. Certification and distribution of funds shall be based on contributions to the candidate reported pursuant to G.S. 163-278.9 and pursuant to this section. In addition to the reports required in G.S. 163-278.9, a candidate who seeks to receive contributions from the Candidates Fund shall file a report of contributions and expenditures at each of the following times before the general election:

(1) The second Wednesday in August, and

(2) The second Wednesday in September.

Those two reports shall be filed on forms prescribed by the State Board. The State Board may prescribe separate forms on which candidates who seek grants from the Candidates Fund shall file the other reports required by G.S. 163-278.9.

(d) Timetable for Distribution. Funds shall be distributed to candidates by September 1 before the general election, based on the August reports required in subsection (c) of this section. Further distribution shall be made within seven days after the filing of each succeeding pre-election contribution report required by this section or by G.S. 163-278.9.

'§ *163-278.51. Withdrawal of application.*--(a) Regular Deadline for Withdrawal. A candidate, by written notice to the State Board

before July 10, may withdraw application to receive money from the Candidates Fund.

(b) Extended Deadline for Withdrawal. Notwithstanding the provisions of subsection (a) of this section, if withdrawal by any other candidate or candidates leaves a person as the only candidate in a contest applying for money from the Candidates Fund, that candidate may withdraw by written notice to the State Board before August 22.

(c) Consequences of Withdrawal. A candidate shall receive no money from the Candidates Fund after that candidate's notice of withdrawal. The candidate will not be subject to the limitations or penalties of this Article if the candidate makes a timely withdrawal.

(d) Vacancies and Replacement Nominees. If a party nominee who has been certified to receive money from the Candidates Fund dies, resigns, or for any reason becomes ineligible or disqualified before the general election but after the applicable deadline in subsection (a) or (b) of this section, that candidate's application for the Candidates Fund is automatically withdrawn without penalty, but the candidate shall return all money received from the Candidates Fund that is unspent at the time that candidate leaves the race. If the nominee is replaced, the new candidate may either:

(1) Forego participation in the Candidates Fund; in that case, the new candidate will:
   a. Not be eligible for any of the money the former candidate received or became entitled to before leaving the race, and
   b. Not be subject to the expenditure limit, or

(2) Assume the position of the former candidate with respect to the Candidates Fund; in that case, the new candidate will:
   a. Be eligible for the unspent money the former candidate returned to the Candidates Fund, and for any money to which the former candidate had become entitled through qualifying matching contributions but had not received before leaving the race, and
   b. Be eligible for any money from the Fund the new candidate may earn through qualifying matching contributions, and
   c. Be subject to the remainder of the former candidate's expenditure limit, and
   d. Be subject to all other requirements for participation in the Candidates Fund that the candidate's late entry into the race do not make inappropriate.

If the new candidate elects to forego the Candidates Fund, any other candidate in the race may withdraw his application within seven days after the new candidate has notified the State Board of a decision to

forego the Candidates Fund, if the candidate seeking to withdraw is left as the only publicly funded candidate in the race. A candidate who withdraws from participation in the Candidates Fund under the circumstances set out in this paragraph must return all money received from the Candidates Fund at the time of withdrawal.

'§ *163-278.52. Penalties; fines.*--In addition to any other penalties which may be applicable under this Chapter, any candidate who receives contributions from the Candidates Fund and who exceeds the applicable expenditure limit or falsely reports qualifying matching contributions and thereby receives contributions from the Candidates Fund to which the candidate was not entitled shall be fined an amount equal to the amount at issue plus ten percent (10%).

'§ *163-278.53. Criminal punishment.*--Any individual, person, candidate, political committee, or treasurer who willfully and intentionally violates any of the provisions of this Article, shall be guilty of a Class J felony.

'§ *163-278.54. Sixty-day post-election report to State Board; audit.*--(a) Maintenance of Records. The treasurer of each candidate shall keep a complete record of receipts from the Candidates Fund and of all subsequent expenditures and disbursements, substantiated by any records, receipts, and information that the State Director of Elections shall require.

(b) Sixty-day Report. By 60 days after each general election, the treasurer of each candidate receiving funds from the Candidates Fund in that general election campaign shall file with the State Board an itemized statement reporting all receipts of Candidates Fund monies and of all subsequent expenditures and disbursements and attach to the report the treasurer's verification that all funds were spent in accordance with the provisions of this Article.

(c) Audit. The State Board shall conduct an audit of the 60-day post-election report. If the Secretary of the State Board finds that any funds were not disbursed or expended in accordance with this Article, the Secretary shall order the candidate to reimburse to the Candidates Fund the amount improperly expended or disbursed.

'§ *163-278.55. Return of unspent money within 90 days of election.*--Any money a candidate receives from the Candidates Fund that is unspent within 90 days after the general election shall be returned to the Candidates Fund. One-half of any amount in the candidate's campaign account required by G.S. 163-278.8 shall be deemed to be money received from the Candidates Fund; provided that if, pursuant to G.S. 163-278.46, the candidate received grants from the Candidates Fund on less than a one-to-one ratio, the same proportion of the candidate's campaign account shall be deemed to be money received from the Candidates Fund.

'§ *163-278.56. Duties of the State Board.*--The State Board shall establish rules for the administration and enforcement of this Article.

'§ *163-278.57. Definitions.*--The terms "candidate," "expend," "individual," "person," and "treasurer" as used in this Article shall be as defined in G.S. 163-278.6.'

"Sec. 2. G.S. 105-163.16 is amended by adding at the end a new subsection to read:

'(f) Any taxpayer who shall be entitled to a refund of taxes withheld or estimated taxes paid as provided by this section may elect to contribute all or any part of such refund to the North Carolina Candidates Financing Fund for the use of political campaigns as provided in Article 22C of Chapter 163 of the General Statutes. The Secretary shall provide appropriate language and space on the individual income tax form in which to make such election and shall note the same in his instructions as a contribution qualifying as a deduction under G.S. 105-147(16). Any such election shall become irrevocable upon filing the taxpayer's income tax return for the taxable year. The Secretary shall, on a quarterly basis, transmit the remainder of such contributions to the State Treasurer for deposit in the North Carolina Candidates Financing Fund. Any interest earned on funds so deposited shall be credited to that Fund.'

"Sec. 3. Article 22B of Chapter 163 of the General Statutes is amended by deleting the phrase 'North Carolina Election Campaign Fund' or 'North Carolina Campaign Election Fund' wherever it appears and substituting 'North Carolina Political Parties Financing Fund' for the first reference and 'Political Parties Fund' for the second and subsequent references.

"Sec. 4. The Secretary of Revenue, the State Treasurer, and the Executive Secretary-Director of the State Board of Elections shall monitor and evaluate the response of the taxpayers and the growth of the Candidates Fund and each shall report to the General Assembly by May 15, 1991~~.~~, and again by May 15, 1993, and again by May 15, 1995. The ~~1991~~ 1995 General Assembly is urged to review those reports and to determine if enough money has accumulated in the Candidates Fund to warrant distribution according to Section 1 of this act. If the ~~1991~~ 1995 General Assembly determines that an insufficient amount of money has accumulated to warrant proceeding with Section 1 of this act, the money that has accumulated in the Candidates Fund shall be transferred to the General Fund.

"Sec. 5. Section 1 of this act shall become effective January 1, ~~1992.~~ 1996. The remainder of this act is effective for taxable years beginning on or after January 1, 1988."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

H.B. 865 **CHAPTER 398**

AN ACT TO ALLOW A LIMITED REPRESENTATIVE TO RECEIVE A LICENSE TO SELL CREDIT PROPERTY INSURANCE AND AUTOMOBILE PHYSICAL DAMAGE INSURANCE ISSUED IN CONNECTION WITH A LOAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-25(e) reads as rewritten:

"(e) A limited representative may receive qualification for one or more licenses without examination for the following kinds of insurance:

(1), (2) Repealed by Session Laws 1989, c. 485, s. 19.
(3) Credit Life, Accident and Health
(4) Credit
(5) Travel Accident and Baggage
(6) Motor Club
(7) Dental ~~Services.~~ Services
(8) Credit Property Insurance and Vendor Single Interest (VSI) Automobile Physical Damage Insurance when either is made in connection with a loan."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 25th day of June, 1991.

S.B. 183 **CHAPTER 399**

AN ACT TO REQUIRE STATE AGENCIES STUDY HOW BEST TO COORDINATE STATE AGENCIES' PROGRAMS AND SERVICES FOR THE HOMELESS.

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources, the Department of Economic and Community Development, the Housing Finance Agency, the Department of Public Instruction, and all other affected State agencies, shall collaborate in a study of how best to coordinate State-level programs and services for the homeless, including McKinney programs. For purposes of collaboration, the Department of Human Resources is designated as the lead agency. This study shall include recommendations as to which agency should have the central State role, as to whether a State position of

coordinator of programs and services is needed and, if so, where to place the position, as to what statutes need changing, if any, and as to what additional legislative action needs to be taken to effect proper coordination.

Sec. 2. The Departments and other State agencies performing the study shall consult with the local public and private agencies and individuals providing services and programs for the homeless.

Sec. 3. The study required by this act shall be presented to the Legislative Research Commission's Study Committee on Homeless Persons, if reauthorized, the Joint Legislative Commission on Governmental Operations, and to the Fiscal Research Division, by October 31, 1991.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 225 **CHAPTER 400**

AN ACT TO GIVE LOCAL BOARDS OF EDUCATION ELECTED ON A DISTRICT BASIS SIMILAR POWER AS CITIES TO REDISTRICT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-37 is amended by adding a new subsection to read:

"(i) The local board of education shall revise electoral district boundaries from time to time as provided by this subsection. If district boundaries are set by local act or court order and the act or order does not provide a method for revising them, the local board of education shall revise them only for the purpose of (i) accounting for territory annexed to or excluded from the school administrative unit, and (ii) correcting population imbalances among the districts shown by a new federal census or caused by exclusions or annexations. After the General Assembly has ratified an act establishing district boundaries, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event first occurs. After the local board of education has revised district boundaries in conformity with this act, the local board of education shall not revise them again until a new federal census of population is taken or territory is annexed to or excluded from the school administrative unit, whichever event occurs first, except that the board may make an earlier revision of district boundaries it has drawn if it must do so to comply with a court order or to gain approval of a

district-revision plan by the U.S. Justice Department under Section 5 of the Voting Rights Act. In establishing district boundaries, the local board of education shall use data derived from the most recent federal census."

Sec. 2. To improve the opportunity for minority citizens to elect candidates of their choice, the Montgomery County Board of Education, which presently consists of five members elected from residency districts, is authorized to alter the size of the board and the method by which board members are elected, subject to the following restrictions:

(1) Elections shall continue to be nonpartisan.
(2) Elections shall continue to be held at the time provided by general State law.
(3) Members elected in 1988 and 1990 shall be entitled to serve the remainder of their terms.
(4) Board members shall continue to serve four year terms, though initial terms of two years may be used for some or all seats as needed to stagger terms.
(5) The size of the board may not be increased to more than seven members.
(6) The board shall hold a public hearing on any proposed change and shall publish notice of the hearing and a description of the proposed change at least ten days before the hearing.
(7) Any changes shall be made by adoption of a resolution.
(8) A resolution adopted pursuant to this section shall be valid only if adopted by December 31, 1991.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 249 **CHAPTER 401**

AN ACT TO REMOVE THE LIMIT ON THE PAYMENT FOR EMERGENCY ROAD SERVICE PROVIDED BY MOTOR CLUBS IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-69-1(5) reads as rewritten:

"(5) 'Emergency road service' shall mean roadside adjustment of a motor vehicle so that such vehicle may be operated under its own ~~power, provided the cost of rendering such service does not exceed fifty dollars ($50.00),~~ power."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 307 **CHAPTER 402**

AN ACT TO PROVIDE THAT NOTICE OF CANCELLATION OF MOTOR VEHICLE LIABILITY INSURANCE IS NOT REQUIRED IF A NEW POLICY IS ISSUED AT THE SAME TIME THE OLD POLICY IS TERMINATED OR CANCELLED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-309(e) reads as rewritten:

"(e) Upon termination by cancellation or otherwise of an insurance policy provided in subsection (b) of this section, the insurer shall notify the Division of such ~~termination.~~ termination; provided, no cancellation notice is required if the insurer issues a new insurance policy complying with this Article at the same time the insurer cancels or otherwise terminates the old policy, no lapse in coverage results, and the insurer sends the certificate of insurance form for the new policy to the Division. The Division, upon receiving notice of cancellation or termination of an owner's financial responsibility as required by this Article, shall notify such owner of such cancellation or termination, and such owner shall, to retain the registration plate for the vehicle registered or required to be registered, within 10 days from date of notice given by the Division either:

(1) Certify to the Division that he had financial responsibility effective on or prior to the date of such termination; or

(2) In the case of a lapse in financial responsibility, pay a fifty dollar ($50.00) civil penalty; and certify to the Division that he now has financial responsibility effective on the date of certification, that he did not operate the vehicle in question during the period of no financial responsibility with the knowledge that there was no financial responsibility, and that the vehicle in question was not involved in a motor vehicle accident during the period of no financial responsibility.

Failure of the owner to certify that he has financial responsibility as herein required shall be *prima facie* evidence that no financial responsibility exists with regard to the vehicle concerned and unless the owner's registration plate has on or prior to the date of termination of insurance been surrendered to the Division by surrender to an agent or representative of the Division designated by the Commissioner, or depositing the same in the United States mail, addressed to the Division of Motor Vehicles, Raleigh, North Carolina, the Division shall revoke the vehicle's registration for 30 days.

In no case shall any vehicle, the registration of which has been revoked for failure to have financial responsibility, be reregistered in the name of the registered owner, spouse, or any child of the spouse, or any child of such owner within less than 30 days after the date of receipt of the registration plate by the Division of Motor Vehicles, except that a spouse living separate and apart from the registered owner may register such vehicle immediately in such spouse's name. Additionally, as a condition precedent to the reregistration of the vehicle by the registered owner, spouse, or any child of the spouse, or any child of such owner, except a spouse living separate and apart from the registered owner, the payment of a restoration fee of fifty dollars ($50.00) and the appropriate fee for a new registration plate is required. Any person, firm or corporation failing to give notice of termination shall be subject to a civil penalty of two hundred dollars ($200.00) to be assessed by the Commissioner of Insurance upon a finding by the Commissioner of Insurance that good cause is not shown for such failure to give notice of termination to the Division."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 386 **CHAPTER 403**

AN ACT TO AMEND THOSE PORTIONS OF THE GENERAL STATUTES THAT LIMIT THE ENVIRONMENTAL MANAGEMENT COMMISSION TO THE ADOPTION OF ENVIRONMENTAL RULES REGARDING WATER QUALITY AND AIR QUALITY THAT ARE NO MORE RESTRICTIVE THAN FEDERAL ENVIRONMENTAL REGULATIONS TO PROVIDE THAT AN EVALUATION OF THE IMPACT OF SUCH RULES BE PREPARED BEFORE SUCH RULES ARE ADOPTED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213(23) reads as rewritten:

"(23) The term 'effluent ~~standards' or 'effluent limitations'~~ standards or limitations' means any restrictions established pursuant to this Article on quantities, rates, characteristics and concentrations of chemical, physical, biological and other constituents of wastes which are discharged from any pretreatment facility or from any outlet or point source to the waters of the State."

Sec. 2. G.S. 143-215 reads as rewritten:

"§ *143-215. Effluent standards ~~and~~ or limitations.*

(a) The Commission is authorized and directed to develop, adopt, modify and revoke effluent standards ~~and~~ or limitations and waste treatment management practices as it determines necessary to prohibit, abate, or control water pollution. The effluent standards or limitations ~~or~~ and management practices may provide, without limitation, standards or limitations or management practices for any point source or sources; standards, limitations, management practices, or prohibitions for toxic wastes or combinations of toxic wastes discharged from any point source or sources; and pretreatment standards for wastes discharged to any disposal system subject to effluent standards or limitations or management practices.

(b) The effluent standards ~~and~~ or limitations developed and adopted by the Commission shall provide limitations upon the effluents discharged from pretreatment facilities and from outlets and point sources to the waters of the State adequate to limit the waste loads upon the waters of the State to the extent necessary to maintain or enhance the chemical, physical, biological and radiological integrity of the waters. The management practices developed and adopted by the Commission shall prescribe practices necessary to be employed in order to prevent or reduce contribution of pollutants to the State's waters.

(c) (1) In adopting effluent standards ~~and~~ or limitations and management practices the Commission shall be guided by the same considerations and criteria set forth, from time to time, in federal law for the guidance of federal agencies administering the Federal Water Pollution Control ~~Program. It is the intent of the General Assembly that the~~ Act. The effluent standards ~~and~~ or limitations and management practices adopted hereunder shall be no more restrictive than the most nearly applicable federal effluent standards ~~and~~ or limitations and management ~~practices.~~ practices unless the Commission first considers, among other things, an evaluation, prepared by the Department in accordance with this subsection, of the impact of the proposed effluent standards or limitations and management practices and finds that the environmental, public health, safety, and welfare benefits of such proposed effluent standards or limitations and management practices justify their costs.

(2) The Department shall prepare and submit into the record of the rule-making hearing an evaluation of the proposed standards or limitations and management practices. The study shall include an estimate of the economic and social costs to commerce and industry, units of local

government, and agriculture to comply with the proposed standards or limitations and management practices and an examination of the environmental, public health, safety, and welfare benefits from the proposed effluent standards or limitations and management practices. The evaluation shall present relevant data, assumptions, analysis, and calculations in sufficient detail to allow the agency and any reviewing person or entity to understand the information presented. The evaluation shall be as extensive as is practicable, in the judgment of the agency, taking into account the time and resources available to the agency and the other duties which the agency is required to carry out.

(3) In preparing the evaluation required by this subsection, the Department may call upon any agency of the State government, the Agricultural Extension Service, the institutions of The University of North Carolina, and private contractors regarding the acquisition and analysis of data necessary to prepare the evaluation required by this subsection.

(4) The evaluation required by this subsection shall take into account the uncertainties associated with the estimation of benefits and costs and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and costs. Benefits and costs which cannot be quantified may be expressed in qualitative terms.

(5) This subsection shall not be interpreted to require a numerical cost-benefit analysis nor to require an evaluation that is inconsistent with federal law or regulation. Nothing in this subsection shall be construed to either alter the basis on which a standard or rule is promulgated or preclude an agency from carrying out its responsibility to protect public health and welfare. Limits and conditions to protect water quality standards that are included in permits issued under this Article are not subject to the requirements of this subsection.

(6) In any judicial review of the rule that is the subject of the study, the entry into the record before the court of the finding as to such impacts by the Commission creates a rebuttable presumption that the environmental, public health, safety, and welfare benefits from the proposed effluent standards or limitations and management practices exceed their social and economic costs. To overcome the presumption, persons challenging the rule must present

clear and convincing evidence that the benefits of the agency rule do not justify the costs.

(7) This subsection does not require that an evaluation be prepared for any rule for which there is no comparable federal effluent limitation or standard.

(d) ~~Notwithstanding the provisions of subsection (c) of this section, the Environmental Management~~ The Commission may adopt rules applicable to any facility ~~which~~ that is sited or operated pursuant to Chapter 130B of the General Statutes ~~which~~ that incorporate standards ~~and restrictions which~~ or limitations and management practices that exceed and are more comprehensive than comparable federal regulations. The procedures set out in subsection (c) of this section do not apply to the adoption of such rules.

(e) Except as required by federal law or regulations, the Commission may not adopt effluent standards or limitations applicable to animal and poultry feeding operations. Notwithstanding the foregoing, where manmade pipes, ditches, or other conveyances have been constructed for the purpose of willfully discharging pollutants to the waters of the State, the Commission shall have the authority to assess fines and penalties not to exceed five thousand dollars ($5,000) for the first offense. The definitions and provisions of 40 Code of Federal Regulations § 122.23 (July 1, 1990 Edition) shall apply to this subsection."

Sec. 3. G.S. 143-215.107 reads as rewritten:

"§ *143-215.107. Air quality standards and classifications.*

(a) Duty to Adopt Plans, Standards, etc. -- The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt such emission control standards as in the judgment of the Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment ~~areas; provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.~~ areas.

(b) Criteria for Standards. -- In developing air quality and emission control standards, the Commission shall recognize varying local conditions and requirements and may prescribe different standards for different areas as may be necessary and appropriate to facilitate accomplishment of the stated purposes of this Article and Article 21.

(c) Chapter 150B of the General Statutes governs the adoption and publication of rules under this Article.

~~(f) Guidance of Federal Criteria and Legislative Intent. -- In adopting air quality policies, rules, and procedures, the Commission or any other State or local regulatory body shall be guided by the same standards, definitions, considerations and criteria set forth, from time to time, in federal law, rules or regulations for the guidance of federal, State or local agencies administering the Federal Clean Air Program.~~

~~It is the intent of the General Assembly (i) that the air quality rules, procedures, plans, practices, air quality standards, and emission control standards~~

(1) Emission control standards adopted by the Commission pursuant to this Article or Article 21, or by any other State or local regulatory body ~~under the General Statutes of North Carolina,~~ shall be no more restrictive and no more stringent than ~~required~~ necessary to comply with federal ~~ambient air quality standards or other applicable federal requirements, if any, adopted in final or proposed regulations by the United States Environmental Protection Agency under or pursuant to the Federal Clean Air Act, and amendments thereto; except (ii) that no air quality rules, procedures, plans, practices, air quality standards or emission control standards shall be adopted by the Commission with respect to matters on which the United States Environmental Protection Agency has not proposed or adopted final regulations~~ requirements unless the Commission first considers, among other things, an ~~assessment~~ evaluation of the ~~economic~~ impact of the proposed ~~standards,~~ emission control standards and finds that the benefits of such proposed emission control standards justify their costs.

(2) The Department shall prepare and submit into the record of the rule-making hearing an ~~economic impact study~~ evaluation, prepared by the Department in accordance with this subsection, of such proposed standards. ~~Such~~ The study shall include an estimate of the economic and social costs to commerce and industry, units of local government, and agriculture ~~necessary~~ to comply with the proposed standards and an examination of ~~the economic and social benefits of such compliance.~~ their environmental, public health, safety, and welfare benefits. The evaluation shall present relevant data, assumptions, analysis, and calculations in sufficient detail to allow the agency and any reviewing person or entity to understand the information presented. The evaluation shall be as extensive as is practicable, in the judgment of the agency, taking into account the time and resources available to the agency and the other duties which the agency is required to carry out.

(3) In preparing the evaluation required by this subsection, the Department may call upon any agency of the State government, the Agricultural Extension Service, the institutions of The University of North Carolina, and private contractors regarding the acquisition and analysis of data

necessary to prepare the evaluation required by this subsection.

(4) The evaluation required by this subsection shall take into account the uncertainties associated with the estimation of benefits and costs and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and costs. Benefits and costs which cannot be quantified may be expressed in qualitative terms.

(5) This subsection shall not be interpreted to require a numerical cost-benefit analysis nor to require an evaluation that is inconsistent with federal law or regulation. Nothing in this subsection shall be construed to either alter the basis on which a standard or rule is promulgated or preclude an agency from carrying out its responsibility to protect public health and welfare. Nothing in this subsection shall be construed to require that an evaluation be prepared if the time required for its preparation would cause the Commission to be unable to adopt rules in accordance with time deadlines established by the Congress of the United States or by the United States Environmental Protection Agency. Limits and conditions to protect air quality standards that are included in permits issued under this Article are not subject to the requirements of this subsection.

(6) In any judicial review of the rule that is the subject of the study, the entry into the record before the court of the finding as to such impacts by the Commission creates a rebuttable presumption that the environmental, public health, safety, and welfare benefits from the proposed emission control standards exceed their social and economic costs. To overcome the presumption, persons challenging the rule must present clear and convincing evidence that the benefits of the agency rule do not justify the costs.

(7) This subsection does not require that an evaluation be prepared for any rule for which there is no comparable federal emission control standard.

~~(g) Notwithstanding the provisions of subdivision (a)(7) and subsection (f) of this section, the Environmental Management~~ The Commission may adopt rules applicable to any facility ~~which~~ that is sited or operated pursuant to Chapter 130B of the General Statutes ~~which~~ that incorporate standards ~~and restrictions which~~ that exceed and are more comprehensive than comparable federal regulations. The procedures set out in subsection (f) of this section do not apply to the adoption of such rules."

Sec. 4. G.S. 130A-295.02(d) reads as rewritten:

"(d) Resident inspectors assigned to a commercial hazardous waste facility shall have unrestricted access to all operational areas of such facility at all times. For the protection of resident inspectors and the public, the provisions of ~~G.S. 143-215.107(a)(7) and~~ G.S. 143-215.107(f) shall not apply to commercial hazardous waste facilities to which a resident inspector is assigned."

Sec. 5. This act shall not be construed to affect the validity of any rule in force on the date this act becomes effective or to proposed rules for which a notice of rule making is published in the North Carolina Register before the date this act becomes effective.

Sec. 6. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. Each agency to which this act applies shall implement the provisions of this act from funds otherwise appropriated or available to that agency.

Sec. 7. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 498 **CHAPTER 404**

AN ACT TO MERGE THE EDGECOMBE COUNTY AND TARBORO CITY SCHOOL ADMINISTRATIVE UNITS.

The General Assembly of North Carolina enacts:

Section 1. *Effective Date.* The existing Edgecombe County School Administrative Unit (hereinafter referred to as the "county unit") and the existing Tarboro City School Administrative Unit (hereinafter referred to as the "city unit") shall be merged effective July 1, 1993. The resulting merged administrative unit shall be known as the Edgecombe County School Administrative Unit (hereinafter referred to as the "merged unit").

Sec. 2. *Voting Rights Preclearance.* The merger of the county and city units into a merged unit is subject to preclearance under the Federal Voting Rights Act before it may be implemented. The attorneys of the existing county and city units shall submit this act to the United States Attorney General for preclearance under section 5 of the Voting Rights Act within 30 days of ratification of this act. In the event this act is not precleared by the Attorney General by the effective date of this merger as provided for in Section 1 above, then merger shall take effect upon preclearance.

Sec. 3. *Interim Merged Board of Education.* (a) Upon ratification of this act there shall be created an Interim Merged Edgecombe County Board of Education (hereinafter referred to as the

"Interim Board") to consist of the following 12 members. Representing the County Unit are: Lawrence Bradley, Lynn Boyette, Charlie Cobb, Jasper Proctor, Glenn Warren, and Evelyn Wilson. Representing the City Unit are: George A. Goodwyn, Thomas B. Anderson, Clifford Coles, William T. Ricks, Sharon B. Sondergard, and Katherine R. Winslow.

(b) The term of office of the members of the Interim Board shall commence upon the ratification of this act, pursuant to Section 2 above, and continue until the effective date of merger.

(c) Any vacancies on the Interim Board shall be filled by the board of the previously existing county or city administrative unit in which the vacancy occurred.

(d) The Interim Board shall elect a chairman and vice-chairman from among its members. The duties of the vice-chairman shall be prescribed by the Interim Board and he/she shall have the same voting rights and privileges as any other member of the Interim Board. The chairman shall exercise those duties prescribed by the Interim Board not inconsistent with the General Statutes. The chair, or member acting as chair at any meeting, shall have the right to vote.

(e) The Interim Board shall have the duty and power to enter into such contracts for personnel, personal and professional services, and operational functions as it deems appropriate, including the authority to employ an Interim Superintendent, such other clerical support staff and contracted services, including but not limited to legal services, as may be deemed necessary and appropriate by the Interim Board pursuant to such appropriations as may be made by the State Board of Education or the Edgecombe County Commissioners; provided, a person who was Superintendent of the Edgecombe County School Administrative Unit or the Tarboro City School Administrative Unit on January 1, 1991, is not eligible to serve as Interim Superintendent. The term of the contract for the Interim Superintendent and such other interim personnel as may be employed pursuant to this section shall terminate no later than the effective date of merger.

(f) The State Board of Education is authorized and directed to allot to the Interim Board upon the effective date of this act, one superintendent position and one clerical support position, and the Edgecombe County Board of Commissioners is authorized to appropriate such funds to the Interim Board as it deems appropriate and necessary for the effective implementation of this act. The Edgecombe County Board of Commissioners shall provide office space for the Interim Superintendent and the Interim Board at a site other than the site of the existing administrative offices of the existing county and city boards.

(g) The Interim Board shall have the authority to organize itself and adopt such policies and procedures as it deems appropriate not inconsistent with those powers possessed by local boards of education under the General Statutes, for the purposes of the operation of the Interim Board and for the adoption of such policies as may be deemed appropriate to govern the Merged Unit subsequent to the effective date of merger.

The authority of the Interim Board shall include, but is not restricted to, the authority to:

(1) Adopt such policies, not inconsistent with the General Statutes, as it deems appropriate for the operation of the Interim Board and the Merged Unit; provided, however, that any change in the policies of the existing administrative units related to assignment of students to classes within individual schools shall not be made by the Interim Board except by a three-fourths affirmative vote;

(2) Employ a superintendent and such other personnel as may be deemed appropriate for the Merged Unit, consistent with the General Statutes;

(3) Draft and propose a budget for the Merged Unit;

(4) Establish the procedures and provisions for the election of a permanent board of education for the Merged Unit;

(5) Establish student assignment boundaries for the Merged Unit, provided, however, that any changes in student assignment boundaries shall not be made by the Interim Board except by a three-fourths affirmative vote; and

(6) Approve the recommendations of the Interim Superintendent for the organization and assignment of staff for the Merged Unit.

(h) All meetings of the Interim Board shall comply with Article 33C of Chapter 143 of the General Statutes (Open Meetings Law); provided, however, that any discussions of the Interim Board regarding litigation related to either existing board of education or the Merged Unit and/or potential litigation related to the Voting Rights Act may be held in executive session.

(i) For purposes of determining dual office holding, the Interim Board shall be deemed to constitute a joint committee of the existing city and county boards of education. Nevertheless, those members serving on the Interim Board while also serving on the existing boards of education shall be eligible for compensation for serving on the Interim Board in addition to and equal to the compensation paid to them by virtue of service on the existing city and county boards.

Sec. 4. *Merged Administrative Unit.* (a) Upon the effective date of merger the Interim Board of Education shall become the Merged

Board of Education of the Merged Unit and shall be named the Edgecombe County Board of Education (herein referred to as the "Merged Board").

(b) Prior to the effective date of merger the existing city and county boards of education shall continue to exercise the same powers and duties for the existing city and county administrative units as they did prior to merger, except as otherwise herein provided. The terms of office of the existing city and county boards of education shall be extended from the ratification of this act, subject to preclearance under the Voting Rights Act, to the effective date of merger. Upon the effective date of merger the existing city and county administrative units and the existing city and county boards of education shall cease to exist.

(c) Upon the effective date of merger, the Merged Board shall exercise those powers and duties ascribed to local boards of education by the General Statutes, except as otherwise provided in this act.

(1) Student assignment boundaries for the Merged Unit shall not be changed by the Merged Board except by a three-fourths affirmative vote of the Merged Board.

(2) The policies of the existing administrative units related to the assignment of students to classes within individual schools shall not be changed by the Merged Board except by a three-fourths affirmative vote of the Merged Board.

(d) Upon the effective date of merger the Merged Board and its successor Permanent Board shall assume and be assigned the title(s) to all property of the existing city and county administrative units. All claims and demands of every kind that the two existing city and county boards may have at the time of merger shall pass and be transferred to the Merged Unit, and the Merged Board and its successor Permanent Board shall have the same authority to enforce those claims and demands as the existing city and county boards of education would have had they continued to exist. Any obligations and liabilities, including but not limited to existing personnel contracts, of the existing city and county boards of education shall become the obligations and liabilities of the Merged Board and its successor Permanent Board, and those obligations and liabilities may be enforced against the Merged Board and its successor Permanent Board to the same extent they might be enforced against the existing city and county boards of education had they continued to exist.

In addition:

(1) The contracts of the existing superintendents with the city and county boards of education at the time of the ratification of this act shall become the obligation of the Merged Board; provided, however, that as long as the terms and conditions

of these contracts are otherwise fulfilled by the Merged Board, the board may assign such duties and responsibilities to the existing superintendents as the Merged Board may deem appropriate.

(2) Upon the ratification of this act and subsequent preclearance by the United States Attorney General, the term of duration of the existing superintendents' contracts shall be made the same as the longer of the contracts for either existing superintendent, however, said contract shall expire no later than June 30, 1994. The State Board of Education is authorized and directed to continue the State allotments for the existing superintendent positions for the duration of said contracts or for a period of two years following the effective date of merger, whichever shall be longer.

(e) Notwithstanding any other provision herein, the Interim Board may act as the Merged Board at any time following the formation of the Interim Board for the purpose of employing a Merged Superintendent. Such action shall require at least a simple majority vote of the Interim or Merged Board and shall not be inconsistent with Article 18 of Chapter 115C of the General Statutes, except as otherwise provided in this act. No person who was the Superintendent of the Edgecombe County School Administrative Unit or the Tarboro City School Administrative Unit on January 1, 1991, is eligible to serve as the Merged Superintendent before July 1, 1995. Nothing herein contained shall prohibit the Merged Board from employing the Interim Superintendent as the Merged Superintendent, and nothing herein contained shall require the Merged Board to employ the Interim Superintendent as the Merged Superintendent.

(f) For purposes of filling vacancies on the Merged Board, the Merged Board shall be divided into two classes: those from the county unit and those from the city unit. In the event of a vacancy in either class, the remaining members of the Merged Board from that class shall fill the vacancy. Any person appointed to fill the vacancy shall reside in the previously existing administrative unit in which the vacancy occurred.

(g) The Interim Board shall prepare and submit to the 1992 Session of the 1991 General Assembly a plan for the organization and election of the Permanent Board of Education in 1994. It is the intent of the General Assembly that the Permanent Board shall be organized and structured in such a manner, and the apportionment and manner of election be done in a way, so as to insure as much as possible that black citizens will have the opportunity to elect candidates of their choice for at least the same proportion of seats as the proportion of minority representatives on the Interim Board. Vacancies on the

Permanent Board shall be filled in a manner prescribed by the plan created for the Permanent Board. Members of the Merged Board shall continue to serve until their successors are duly elected and sworn in.

(h) All meetings of the Merged Board shall comply with Article 33C of Chapter 143 of the General Statutes (Open Meetings Law); provided, however, that any discussions of the Merged Board regarding litigation related to either existing board of education or the Merged Unit and/or potential litigation related to the Voting Rights Act may be held in executive session.

Sec. 5. *Permanent Board of Education.* (a) Upon installation of the Permanent Board as provided for in Section 4 above, the Permanent Board shall assume the full duty and responsibility for the governance of the Merged Unit as provided for in the General Statutes for local boards of education; provided, however, that the following temporary restrictions shall be placed on the Permanent Board:

(1) Student assignment boundaries for the Merged Unit shall not be changed by the Permanent Board for a period of eight years after the effective date of merger except by a three-fourths affirmative vote of the Permanent Board.

(2) The selection and assignment of personnel filling certified positions shall be made by a simply majority vote of the Interim and Merged Boards. Any involuntary reassignment across previous administrative unit boundaries of persons filling certified positions by the Permanent Board shall be made only by a two-thirds affirmative vote during the first five years following the effective date of merger.

(3) The adoption of the Annual Budget Resolution, and subsequent amendments, as required by G.S. 115C-425, shall be by a simple majority of the Interim and Merged Boards but shall require a two-thirds affirmative vote by the Permanent Board during the first five years following the effective date of merger.

(4) The termination, reassignment, or replacement of the Merged Superintendent by the Permanent Board shall require a two-thirds vote for a period of three years after the installation of the Permanent Board.

(5) The policies of the existing administrative units related to the assignment of students to classes within individual schools shall not be changed by the Permanent Board during the five years following the effective date of merger except by a three-fourths affirmative vote.

(b) The compensation paid to members of the Merged and Permanent Boards shall be set by the members of the Edgecombe County Board of Commissioners.

(c) The existing authorized supplemental school tax levy of twenty-five cents (25¢) per one hundred dollars ($100.00) of assessed valuation within the city unit is hereby extended throughout the Merged Unit to be assessed at an annual rate set by the Edgecombe County Board of Commissioners.

Prior to the effective date of merger, the Edgecombe County Board of Commissioners may, at its discretion, adopt an annual budget resolution which provides for a supplemental tax rate in the existing Edgecombe County Administrative Unit which may be less than that assessed in the Tarboro Administrative Unit; provided, however, in each fiscal year following the effective date of merger any supplemental tax assessed pursuant to this act shall be uniform throughout the Merged Unit.

(d) It is the intent of the General Assembly that the Board of Commissioners of Edgecombe County shall insure that the per pupil appropriations from county appropriations to the Merged Unit shall be, and remain, at least as high as the per pupil county appropriations of the higher of the appropriations to either the existing city or county unit in the three years prior to merger.

(e) All meetings of the Permanent Board shall comply with Article 33C of Chapter 143 of the General Statutes (Open Meetings Law); provided, however, that any discussions of the Permanent Board regarding litigation related to either existing board of education or the Merged Unit and/or potential litigation related to the Voting Rights Act may be held in executive session.

Sec. 6. Severability and Remedy for Nullification. In the event that any section or portion of this act shall be found to be invalid by a court of competent jurisdiction or be objected to by the Attorney General of the United States pursuant to section 5 of the Voting Rights Act, such findings or objectives shall in no way nullify any other section or portion of this act not found to be invalid or objected to. The Interim Board, Merged Board or Permanent Board is authorized and directed to take whatever action(s) necessary to correct any invalidation, not inconsistent with the General Statutes.

Sec. 7. *Repeal of Conflicting Laws.* All laws and clauses of laws in conflict with this act are hereby repealed.

Sec. 8. *Effective Date.* This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 516 **CHAPTER 405**

AN ACT TO AMEND THE LAW REGARDING THE COMMISSION FOR MENTAL HEALTH, DEVELOPMENTAL DISABILITIES, AND SUBSTANCE ABUSE SERVICES' ADOPTION OF STANDARDS FOR SERVICE DELIVERY TO DEPARTMENT OF CORRECTION INMATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 148-19(d) reads as rewritten:

"(d) The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall ~~prescribe~~ adopt standards for the delivery of mental ~~health, mental retardation, and substance abuse~~ health and mental retardation services to inmates in the custody of the Department of Correction. The Commission for Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services shall give the Secretary of Correction an opportunity to review and comment on proposed standards prior to promulgation of such standards; however, final authority to determine such standards remains with the Commission. The Secretary of the Department of Human Resources shall designate an agency or agencies within the Department of Human Resources to monitor the implementation ~~of such standards by the Department of Correction.~~ by the Department of Correction of these standards and of substance abuse standards adopted by the Department of Correction upon the advice of the Substance Abuse Advisory Council established pursuant to G.S. 143B-270. The Secretary of Human Resources shall send a written report on the progress which the Department of Correction has made on the implementation of such standards to the Governor, the Lieutenant Governor, and the Speaker of the House. Such reports shall be made on an annual basis beginning January 1, 1978."

Sec. 2. G.S. 143B-270 reads as rewritten:

"§ *143B-270. Substance Abuse Advisory Council.*

(a) There is created a Substance Abuse Advisory Council to consult with the Secretary of the Department of Correction in the administration of the Substance Abuse Program.

(b) The Council shall be composed of nine members. Three members shall be appointed by the Speaker of the House of Representatives, three members by the Lieutenant Governor, and three members by the Governor. Of each set of three members, the appointing authority shall appoint one person who is a member of the recovering community, one other person who is a professional in the field of substance abuse services, and one other person who is a

member of the public at large. Vacancies shall be filled by the office making the initial appointment and for the remainder of the unexpired term only. The Council shall elect its chairman annually.

(c) Members appointed shall hold office for a term of four years beginning on October 1, 1987, except that three of the initial appointees and these three appointees' immediate successors shall serve a term of two ~~years.~~ years, with the immediate successors' terms expiring on September 30, 1991. The Speaker, Lieutenant Governor, and Governor shall each select one of their initial appointees to serve a two-year term.

(d) The Council shall meet at least once each quarter and at the call of the Secretary.

(e) Council members who are members of the General Assembly shall receive travel and subsistence allowances as provided in G.S. 120-3.1. Council members who are not members of the General Assembly shall receive travel and subsistence as provided in G.S. 138-5."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 522 **CHAPTER 406**

AN ACT TO CREATE THE NORTH CAROLINA TRAVEL AND TOURISM BOARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 143B of the General Statutes is amended by adding a new section to read:

"*§ 143B-434.1. The North Carolina Travel and Tourism Board -- creation, duties, membership.*

(a) There is created within the Department of Economic and Community Development the North Carolina Travel and Tourism Board. The Secretary of Economic and Community Development and the Director of the Division of Travel and Tourism will work with the Board to fulfill the duties and requirements set forth in this section, and to promote the sound development of the travel and tourism industry in North Carolina.

(b) The function and duties of the Board shall be:

(1) To advise the Secretary of Economic and Community Development in the formulation of policy and priorities for the promotion and development of travel and tourism in the State.

(2) To advise the Secretary of Economic and Community Development in the development of a budget for the Division of Travel and Tourism.

(3) To recommend programs to the Secretary of Economic and Community Development that will promote the State as a travel and tourism destination and that will develop travel and tourism opportunities throughout the State.

(4) To advise the Secretary of Economic and Community Development every three months as to the effectiveness of agencies with which the Department has contracted for advertising and regarding the selection of an advertising agency that will assist the Department in the promotion of the State as a travel and tourism destination.

(5) To name a three-member subcommittee, with one member from each of the eastern, central, and western regions of the State, to make recommendations to the Secretary of Economic and Community Development regarding any revisions in the matching funds tourism grants program, project applications, and criteria for projects that qualify for participation in the program.

(6) To advise the Secretary of Economic and Community Development from time to time as to the effectiveness of the overall operations of the Division of Travel and Tourism.

(7) To promote the exchange of ideas and information on travel and tourism between State and local governmental agencies, and private organizations and individuals.

(8) To advise the Secretary of Economic and Community Development upon any matter that the Secretary, Governor, or Director of the Division of Travel and Tourism may refer to it.

(c) The Board shall consist of 25 members as follows:

(1) The Secretary of Economic and Community Development, who shall not be a voting member.

(2) The Director of the Division of Travel and Tourism, who shall not be a voting member.

(3) Two members designated by the Board of Directors of the North Carolina Hotel and Motel Association.

(4) Two members designated by the Board of Directors of the North Carolina Restaurant Association.

(5) Three Directors of Convention and Visitor Bureaus designated by the Board of Directors of the North Carolina Association of Convention and Visitor Bureaus.

(6) The Chairperson of the Travel and Tourism Coalition.

(7) The President of the Travel Council of North Carolina.

(8) A member designated by the Board of Directors of the Travel Council of North Carolina.

(9) The President of North Carolina Citizens for Business and Industry.

(10) One member designated by the North Carolina Petroleum Marketers Association.

(11) One person associated with tourism attractions in North Carolina, appointed by the General Assembly, upon recommendation of the Speaker of the House of Representatives.

(12) One person associated with the tourism-related transportation industry, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

(13) Four public members each interested in matters relating to travel and tourism, two appointed by the Governor (one from a rural area and one from an urban area), one appointed by the General Assembly upon recommendation of the Speaker of the House, and one appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

(14) One member associated with the major cultural resources and activities of the State in North Carolina, appointed by the Governor.

(15) Two members of the House of Representatives, appointed by the General Assembly upon recommendation of the Speaker of the House of Representatives.

(16) Two members of the Senate, appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate.

(d) The members of the Board shall serve the following terms: the Secretary of Economic and Community Development, the Director of the Division of Travel and Tourism, the Chairperson of the Travel and Tourism Coalition, the President of the Travel Council of North Carolina, and the President of North Carolina Citizens for Business and Industry shall serve on the Board while they hold their respective offices. Each member of the Board appointed by the Governor shall serve during his or her term of office. The members of the Board appointed by the General Assembly shall serve two-year terms beginning on January 1 of odd-numbered years and ending on December 31 of the following year. The first such term shall begin on January 1, 1991, or as soon thereafter as the member is appointed to the Board, and end on December 31, 1992. All other members of the Board shall serve a term which consists of the portion of calendar

year 1991 that remains following their appointment or designation and, thereafter, two-year terms which shall begin on January 1 of an even-numbered year and end on December 31 of the following year. The first such two-year term shall begin on January 1, 1992, and end on December 31, 1994.

(e) No member of the Board, except a member serving by virtue of his or her office, shall serve during more than five consecutive calendar years, except that a member shall continue to serve until his or her successor is appointed.

(f) Appointments to fill vacancies in the membership of the Board that occur due to resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term and shall be made by the same appointing authority that made the initial appointment.

(g) Board members who are employees of the State shall receive travel allowances at the rate set forth in G.S. 138-6. Board members who are legislators shall be reimbursed for travel and subsistence in accordance with G.S. 120-3.1. All other Board members, except those serving pursuant to subdivisions (3) through (10) of subsection (c) of this section, shall receive per diem, subsistence, and travel expenses at the rate set forth in G.S. 138-5. Board members serving pursuant to subdivisions (3) through (10) of subsection (c) of this section shall not receive per diem, subsistence, or travel expenses. The expenses set forth in this section shall be paid by the Division of Travel and Tourism of the Department of Economic and Community Development.

(h) At its first meeting in 1991, the Board shall elect one of its voting members to serve as Chairperson during calendar year 1991. At its last regularly scheduled meeting in 1991, and at its last regularly scheduled meeting in each year thereafter, the Board shall elect one of its voting members to serve as Chairperson for the coming calendar year. No person shall serve as Chairperson during more than three consecutive calendar years. The Chairperson shall continue to serve until his or her successor is elected.

(i) A majority of the current voting membership shall constitute a quorum.

(j) The Secretary of Economic and Community Development shall provide clerical and other services as required by the Board."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 599 **CHAPTER 407**

AN ACT PERMITTING THE CHILD OF A LEGISLATOR TO ATTEND SCHOOL IN THE LOCAL SCHOOL ADMINISTRATIVE UNIT IN WHICH HE RESIDES WHILE HIS PARENT SERVES IN THE GENERAL ASSEMBLY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-366 is amended by adding a new subsection to read:

"(c) Any child who is qualified under the laws of this State for admission to a public school and who has a place of residence in a local school administrative unit incident to his parent's or guardian's service in the General Assembly, other than the local school administrative unit in which he is domiciled, is entitled to attend school in the local school administrative unit of that residence as if he were domiciled there, subject to the payment of applicable out-of-county fees in effect at the time."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 657 **CHAPTER 408**

AN ACT TO AMEND THE WORKERS' COMPENSATION ACT REGARDING THE RIGHTS AND REMEDIES OF AN EMPLOYEE, HIS EMPLOYER, AND THE EMPLOYER'S INSURANCE COMPANY AGAINST THIRD PARTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-10.2 reads as rewritten:

"*§ 97-10.2. Rights under Article not affected by liability of third party; rights and remedies against third parties.*

(a) The right to compensation and other benefits under this Article for disability, disfigurement, or death shall not be affected by the fact that the injury or death was caused under circumstances creating a liability in some person other than the employer to pay damages therefor, such person hereinafter being referred to as the 'third party.' The respective rights and interests of the employee-beneficiary under this Article, the employer, and the employer's insurance carrier, if any, in respect of the common-law cause of action against such third party and the damages recovered shall be as set forth in this section.

(b) The employee, or his personal representative if he be dead, shall have the exclusive right to proceed to enforce the liability of the

third party by appropriate proceeding if such proceedings are instituted not later than 12 months after the date of injury or death, whichever is later. During said 12-month period, and at any time thereafter if summons is issued against the third party during said 12-month period, the employee or his personal representative shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below.

(c) If settlement is not made and summons is not issued within said 12-month period, and if employer shall have filed with the Industrial Commission a written admission of liability for the benefits provided by this Chapter, then either the employee or the employer shall have the right to proceed to enforce the liability of the third party by appropriate proceedings; either shall have the right to settle with the third party and to give a valid and complete release of all claims to the third party by reason of such injury or death, subject to the provisions of (h) below. Provided that 60 days before the expiration of the period fixed by the applicable statute of limitations if neither the employee nor the employer shall have settled with or instituted proceedings against the third party, all such rights shall revert to the employee or his personal representative.

(d) The person in whom the right to bring such proceeding or make settlement is vested shall, during the continuation thereof, also have the exclusive right to make settlement with the third party and the release of the person having the right shall fully acquit and discharge the third party except as provided by (h) below. A proceeding so instituted by the person having the right shall be brought in the name of the employee or his personal representative and the employer or the insurance carrier shall not be a necessary or proper party thereto. If the employee or his personal representative shall refuse to cooperate with the employer by being the party plaintiff, then the action shall be brought in the name of the employer and the employee or his personal representative shall be made a party plaintiff or party defendant by order of court.

(e) The amount of compensation and other benefits paid or payable on account of such injury or death shall be admissible in evidence in any proceeding against the third party. In the event that said amount of compensation and other benefits is introduced in such a proceeding the court shall instruct the jury that said amount will be deducted by the court from any amount of damages awarded to the plaintiff. If the third party defending such proceeding, by answer duly served on the employer, sufficiently alleges that actionable negligence of the employer joined and concurred with the negligence of the third party in producing the injury or death, then an issue shall be submitted to

the jury in such case as to whether actionable negligence of employer joined and concurred with the negligence of the third party in producing the injury or death. The employer shall have the right to appear, to be represented, to introduce evidence, to cross-examine adverse witnesses, and to argue to the jury as to this issue as fully as though he were a party although not named or joined as a party to the proceeding. Such issue shall be the last of the issues submitted to the jury. If the verdict shall be that actionable negligence of the employer did join and concur with that of the third party in producing the injury or death, then the court shall reduce the damages awarded by the jury against the third party by the amount which the employer would otherwise be entitled to receive therefrom by way of subrogation hereunder and the entire amount recovered, after such reduction, shall belong to the employee or his personal representative free of any claim by the employer and the third party shall have no further right by way of contribution or otherwise against the employer, except any right which may exist by reason of an express contract of indemnity between the employer and the third party, which was entered into prior to the injury to the employee. In the event that the court becomes aware that there is an express contract of indemnity between the employer and the third party the court may in the interest of justice exclude the employer from the trial of the claim against the third party and may meet the issue of the actionable negligence of the employer to the jury in a separate hearing.

(f) (1) If the employer has filed a written admission of liability for benefits under this Chapter with, or if an award final in nature in favor of the employee has been entered by the Industrial Commission, then any amount obtained by any person by settlement with, judgment against, or otherwise from the third party by reason of such injury or death shall be disbursed by order of the Industrial Commission for the following purposes and in the following order of priority:

a. First to the payment of actual court costs taxed by ~~judgment.~~ judgment and/or reasonable expenses incurred by the employee in the litigation of the third-party claim.

b. Second to the payment of the fee of the attorney representing the person making settlement or obtaining judgment, and except for the fee on the subrogation interest of the employer such fee shall not be subject to the provisions of ~~§ 90 of this Chapter~~ G.S. 97-90 but shall not exceed one third of the amount obtained or recovered of the third party.

c. Third to the reimbursement of the employer for all benefits by way of compensation or medical treatment expense paid or to be paid by the employer under award of the Industrial Commission.

d. Fourth to the payment of any amount remaining to the employee or his personal representative.

(2) The attorney fee paid under (f)(1) shall be paid by the employee and the employer in direct proportion to the amount each shall receive under (f)(1)c and (f)(1)d hereof and shall be deducted from such payments when distribution is made.

(g) The insurance carrier affording coverage to the employer under this Chapter shall be subrogated to all rights and liabilities of the employer hereunder but this shall not be construed as conferring any other or further rights upon such insurance carrier than those herein conferred upon the employer, anything in the policy of insurance to the contrary notwithstanding.

(h) In any proceeding against or settlement with the third party, every party to the claim for compensation shall have a lien to the extent of his interest under (f) hereof upon any payment made by the third party by reason of such injury or death, whether paid in settlement, in satisfaction of judgment, as consideration for covenant not to sue, or otherwise and such lien may be enforced against any person receiving such funds. Neither the employee or his personal representative nor the employer shall make any settlement with or accept any payment from the third party without the written consent of the other and no release to or agreement with the third party shall be valid or enforceable for any purpose unless both employer and employee or his personal representative join therein; provided, that this sentence shall not ~~apply if~~ apply:

(1) If the employer is made whole for all benefits paid or to be paid by him under this Chapter less attorney's fees as provided by (f)(1) and (2) hereof and the release to or agreement with the third party is executed by the ~~employee.~~ employee; or

(2) If either party follows the provisions of subsection (j) of this section.

(i) Institution of proceedings against or settlement with the third party, or acceptance of benefits under this Chapter, shall not in any way or manner affect any other remedy which any party to the claim for compensation may have except as otherwise specifically provided in this Chapter, and the exercise of one remedy shall not in any way or manner be held to constitute an election of remedies so as to bar the other.

(j) ~~In~~ Notwithstanding any other subsection in this section, in the event that a judgment is obtained which is insufficient to compensate the subrogation claim of the Workers' Compensation Insurance Carrier, or in the event that a settlement has been agreed upon by the employee and the third ~~party when said action is pending on a trial calendar and the pretrial conference with the judge has been held,~~ party, either party may apply to the resident superior court judge of the county in which the cause of action arose, where the injured employee resides or the presiding judge before whom the cause of action is pending, ~~for determination as to the amount to be paid to each by such third party tort-feasor.~~ to determine the subrogation amount. After notice to the employer and the insurance carrier, after an opportunity to be heard by all interested parties, and with or without the consent of the employer, the judge shall determine, in his discretion, the amount, if any, of the employer's lien and the amount of cost of the third-party litigation to be shared between the employee and employer. If the matter is pending in the federal district court such determination may be made by a federal district court judge of that division."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 724 **CHAPTER 409**

AN ACT AMENDING THE UNEMPLOYMENT INSURANCE LAW TO ADD A PROVISION FOR AN "EXTENDED BASE PERIOD".

The General Assembly of North Carolina enacts:

Section 1. Chapter 96 of the General Statutes is amended by adding the following new section to read:

"*§ 96-12.1. Extended base period for certain job related injuries.*

If an individual lacks sufficient base period wages because of a job related injury for which he received workers' compensation, upon written application by the claimant, an extended base period will be substituted for the current base period on a quarter-by-quarter basis as needed to establish a valid claim. 'Extended base period' means the four quarters prior to the claimant's base period. These four quarters may be substituted for base period quarters on a quarter-by-quarter basis to establish a valid claim regardless of whether the wages have been used to establish a prior claim, except any wages earned that would render the Employment Security Commission of North Carolina out of compliance with applicable federal law will be excluded if used

in a prior claim. Benefits paid on the basis of an extended base period, which would not otherwise be payable, shall be noncharged."

Sec. 2. This act becomes effective October 1, 1991, and expires on June 30, 1993.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 352 **CHAPTER 410**

AN ACT TO LIMIT THE NORTH CAROLINA CHILDHOOD VACCINE-RELATED INJURY PROGRAM TO CLAIMANTS WHO ARE PERMITTED BY FEDERAL LAW TO BRING A CIVIL ACTION FOR DAMAGES FOR VACCINE-RELATED INJURY OR DEATH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-423 reads as rewritten:

"§ *130A-423. North Carolina Childhood Vaccine-Related Injury Compensation Program; exclusive remedy; relationship to federal law; subrogation.*

(a) There is established the North Carolina Childhood Vaccine-Related Injury Compensation Program.

(b) The rights and remedies granted the claimant, the claimant's parent, guardian *ad litem*, guardian, or personal representative shall exclude all other rights and remedies of the claimant, his parent, guardian *ad litem*, guardian, or personal representative against any respondent at common law or otherwise on account of such injury, illness, disability, death, or condition. If such an action is filed, it shall be dismissed, with prejudice, on the motion of any party under law.

(b1) A claimant may file a petition pursuant to this Article only after such claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting such claimant to file a civil action for damages for a vaccine-related injury or death or if such claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer.

(c) *(For effective date see note)* Nothing in this Article prohibits any individual from bringing a civil action against a vaccine manufacturer for damages for a vaccine-related injury or death if the action is not barred by federal law under subtitle 2 of Title XXI of the Public Health Service Act.

(d) *(For effective date see note)* If any action is brought against a vaccine manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the

plaintiff in the action may recover damages only to the extent permitted by subdivisions (1) through (3) of subsection (a) of G.S. 130A-427. The aggregate amount awarded in any such action may not exceed the limitation established by subsection (b) of G.S. 130A-427. Regardless of whether such an action is brought against a vaccine manufacturer, a claimant who has filed an election pursuant to Section 2121 of the Public Health Service Act, as enacted into federal law by Public Law 99-660, permitting such a claimant to file a civil action for damages for a vaccine-related injury or death, or who is otherwise permitted by federal law to file an action against a vaccine manufacturer, may file a petition pursuant to G.S. 130A-425 to obtain services from the Department and the Department of Human Resources pursuant to subdivision (5) of subsection (a) of G.S. 130A-427 and, if no action has been brought against a vaccine manufacturer, to obtain other relief available pursuant to G.S. 130A-427.

(e) *(For effective date see note)* In order to prevent recovery of duplicate damages, or the imposition of duplicate liability, in the event that an individual seeks an award pursuant to G.S. 130A-427 and also files suit against the manufacturer as permitted by subtitle 2 of Title XXI of the Public Health Service Act and subsection (c) of this section, the following provisions shall apply:

(1) If, at the time an award is made pursuant to G.S. 130A-427, an individual has already recovered damages from a manufacturer pursuant to a judgment or settlement, the award shall consist only of a commitment to provide services pursuant to subdivision (5) of subsection (a) of G.S. 130A-427.

(2) If, at any time after an award is made to a claimant pursuant to G.S. 130A-427, an individual recovers damages for the same vaccine-related injury from a manufacturer pursuant to a judgment or settlement, the individual who recovers the damages shall reimburse the State for all amounts previously recovered from the State in the prior proceeding. Before a defendant in any action for a vaccine-related injury pays any amount to a plaintiff to discharge a judgment or settlement, he shall request from the Secretary and the Secretary of Human Resources a statement itemizing any reimbursement owed by the plaintiff pursuant to this subdivision, and, if any reimbursement is owed by the plaintiff to either department, the defendant shall pay the reimbursable amounts, as determined by each Secretary, directly to the department to which such reimbursement is owed. This payment shall discharge the plaintiff's obligations to the State under this

subdivision and any obligation the defendant may have to the plaintiff with respect to these amounts.

(3) If:

a. An award has been made to a claimant for an element of damages pursuant to G.S. 130A-427; and

b. An individual has recovered for the same element of damages pursuant to a judgment in, or settlement of, an action for the same vaccine-related injury brought against a manufacturer, and that amount has not been remitted to the State pursuant to subdivision (2) of this subsection; and

c. The State seeks to recover the amounts it paid in an action it brings against the manufacturer pursuant to G.S. 130A-430;

any judgment obtained by the State under G.S. 130A-430 shall be reduced by the amount necessary to prevent the double recovery of any element of damages from the manufacturer. Nothing in this subdivision limits the State's right to obtain reimbursement from a claimant under subdivision (2) of this subsection with respect to any double payment that might be received by the claimant.

(f) *(For effective date see note)* Subrogation claims pursued under the National Childhood Vaccine Injury Act of 1986 shall be filed with the appropriate court, not with the Industrial Commission."

Sec. 2. G.S. 130A-425(b) reads as rewritten:

"(b) In all claims filed pursuant to this Article, the claimant or the person in whose behalf the claim is made shall file with the Commission a verified petition in duplicate, setting forth the following information:

(1) The name and address of the claimant;

(2) The name and address of each respondent;

(3) The amount of compensation in money and services sought to be recovered;

(4) The time and place where the injury occurred;

(5) A brief statement of the facts and circumstances surrounding the injury and giving rise to the claim; and

(6) Supporting documentation and a statement of the claim that the claimant or the person in whose behalf the claim is made suffered a vaccine-related injury and has not previously collected an award or settlement of a civil action for damages for this injury. This supporting documentation shall include all available medical records pertaining to the alleged injury, including autopsy reports, if any, and if the injured person was under two years of age at the time of injury, all

prenatal, obstetrical, and pediatric records of care preceding the injury, and an identification of any unavailable records known to the claimant or the person in whose behalf the claim is made.

(7) Documentation to show that the claimant has filed an election pursuant to Section 2121 of the Public Health Service Act, P.L. 99-660, permitting such claimant to file a civil action for damages for a vaccine-related injury or death or documentation to show that such claimant is otherwise permitted by federal law to file an action against a vaccine manufacturer."

Sec. 3. G.S. 130A-429 reads as rewritten:

"§ *130A-429. Limitation on claims.*

(a) Except as provided in subsection (b) of this section, any claim under this Article that is filed more than six years after the administration of a vaccine alleged to have caused a vaccine-related injury is barred. Claims on behalf of minors or incompetent persons shall be be filed by their parents, guardians ad litem, or guardians within the applicable limitations period established by this section.

(b) Claims that are filed in accordance with the procedures set forth in G.S. 130A-425(b) within six years after the date of the enactment of this Article shall not be barred unless, on the date the claim was filed, the claimant was barred by the applicable statute of limitations from filing an action for damages with respect to the subject matter of the claim.

(c) The period of limitation set forth in this section shall be stayed beginning on the date the claimant files a petition under Section 2111 of the Public Health Service Act, P.L. 99-660, and ending 120 days after the date final judgment is entered on the petition."

Sec. 4. This act is effective upon ratification and applies to claims filed with the Industrial Commission on or after that date.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 435 **CHAPTER 411**

AN ACT TO REWRITE AND AMEND THE MOTOR VEHICLE LAWS RELATING TO HANDICAPPED PERSONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-37.5 reads as rewritten:

"§ *20-37.5.* ~~*Handicapped--Definition.*~~ *Definitions.*

~~As used in this Article, handicapped shall mean:~~

~~(1) Any person who has an obvious physical disability that requires the use of a wheelchair, braces, walkers, or crutches, and those who have lost the use of one or both legs; or~~

~~(2) Any person who, as determined and certified by a physician, is severely restricted in mobility by a pulmonary or cardiovascular disability, arthritic condition, orthopedic or neurologic impairment.~~

Unless the context requires otherwise, the following definitions apply throughout this Article to the defined words and phrases and their cognates:

(1) 'Distinguishing license plate' means a license plate that displays the International Symbol of Access using the same color, size of plate, and size of letters or numbers as a regular plate.

(2) 'Handicapped' shall mean a person with a mobility impairment who, as determined by a licensed physician:

a. Cannot walk 200 feet without stopping to rest;

b. Cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;

c. Is restricted by lung disease to such an extent that the person's forced (respiratory) expiratory volume of one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

d. Uses portable oxygen;

e. Has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association;

f. Is severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition; or

g. Is totally blind or whose vision with glasses is so defective as to prevent the performance of ordinary activity for which eyesight is essential, as certified by a licensed ophthalmologist, optometrist, or the Division of Services for the Blind.

(3) 'International Symbol of Access' means the symbol adopted by Rehabilitation International in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled.

(4) 'Removable windshield placard' means a two-sided, hooked placard which includes on each side:

a. The International Symbol of Access, which is at least three inches in height, centered on the placard, and is white on a blue shield;
b. An identification number;
c. An expiration date; and
d. The seal or other identification of the issuing authority."

Sec. 2. G.S. 20-37.6 reads as rewritten:

"§ *20-37.6. Handicapped; drivers and passengers; parking privileges.*

(a) Any vehicle driven by or transporting a person who is handicapped as defined by G.S. 20-37.5 ~~or transporting a person who is visually impaired as defined by G.S. 111-11, as certified by a licensed ophthalmologist, optometrist, or Division of Services for the Blind,~~ displaying a distinguishing license plate, a removable windshield placard, or a temporary removal windshield placard may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated by aboveground markings as restricted to vehicles distinguished as being driven by or as transporting the ~~handicapped or as transporting the visually impaired,~~ handicapped.

(b) Handicapped Car Owners; Distinguishing License Plates. -- If the handicapped ~~or visually impaired~~ person is a registered owner of a vehicle, ~~this vehicle~~ the owner may apply for and display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive ~~a combination of two distinguishing placards or identification cards under subsection (c),~~ one removable windshield placard.

(c) Handicapped Drivers and Passengers; Distinguishing ~~Placards or Identification Cards.~~ Placards. -- A handicapped person ~~who is either handicapped or visually impaired~~ may apply for the issuance of a ~~distinguishing placard or a wallet-size identification card to be designed by the Division of Motor Vehicles of the Department of Transportation, in cooperation with the Office for the Handicapped of the Department of Insurance,~~ removable windshield placard or a temporary removable windshield placard. Upon request, one additional placard may be issued to applicants who do not have a distinguishing license plate. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped ~~or visually impaired people,~~ persons may also apply. These organizations may receive one removable windshield placard for each transporting vehicle. ~~A placard shall be at least 6~~

~~inches by 12 inches in size, and a placard or identification card shall contain all the information the Division of Motor Vehicles deems necessary for designation and enforcement. A placard or identification card shall be displayed on the driver's side of the dashboard of a vehicle only when the vehicle is being driven by a duly licensed handicapped driver or is being used to transport handicapped or visually impaired passengers.~~ When the removable windshield or temporary removable windshield placard ~~or identification card~~ is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The removable windshield placard or the temporary removable windshield placard shall be displayed so that it may be viewed from the front and rear of the vehicle by hanging it from the front windshield rearview mirror of a vehicle using a parking space allowed for handicapped persons. When there is no inside rearview mirror, or when the placard cannot reasonably be hung from the rearview mirror by the handicapped person, the placard shall be displayed on the driver's side of the dashboard. A removable windshield placard placed on a motorized wheelchair or similar vehicle shall be displayed in a clearly visible location. The Division of Motor Vehicles shall establish procedures for the issuance of the ~~distinguishing~~ placards ~~and identification cards,~~ and may charge a fee sufficient to pay the actual cost of ~~issuance.~~ issuance, but in no event less than five dollars ($5.00) per placard. ~~A combination of two placards or identification cards may be issued to an applicant on request. Applicants who are organizations may receive one placard or identification card for each transporting vehicle.~~

(c1) Application for Placard; Physician's Certification. -- The initial application for a distinguishing license plate, removable windshield placard, or temporary removable windshield placard shall be accompanied by a certification of a licensed physician, ophthalmologist, optometrist, or the Division of Services for the Blind that the applicant meets the definition of a person being handicapped in G.S. 20-37.5. The application for a temporary removable windshield placard shall contain additional certification to include the period of time the certifying authority determines the applicant will have the disability. Distinguishing license plates shall be renewed annually, but subsequent applications shall not require a medical certification that the applicant meets the definition of being handicapped in G.S. 20-37.5. Removable windshield placards shall be renewed every five years, and the renewal shall require a medical recertification that the person is handicapped as defined in G.S. 20-37.5. Temporary removable windshield placards shall expire no later than six months after issuance.

(c2) Existing Placards; Expiration; Exchange for New Placards. -- All existing placards shall expire on January 1, 1992. No person shall be convicted of parking in violation of this Article by reason of an expired placard if the defendant produces in court, at the time of trial on the illegal parking charge, an expired placard and a renewed placard issued within 30 days of the expiration date of the expired placard and which would have been a defense to the charge had it been issued prior to the time of the alleged offense. Existing placards issued on or after July 1, 1989, may be exchanged without charge for the new placards.

(d) Designation of Parking Places. -- Designation of parking spaces for the physically handicapped and the visually impaired on streets and in other areas, including public vehicular areas specified in G.S. 20-4.01(32), shall be by the use of sign R7-8 for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N.C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices. Signs R7-8 and R7-8a shall state the maximum penalty for parking in a parking space for the physically handicapped or visually impaired in violation of the law.

(d1) Unique Properties. -- The owner of private property which contains a public vehicular area, on which is to be designated one or more parking spaces for the physically handicapped and the visually impaired, may file a written certification, on a form supplied by the Department of Transportation, that signs conforming to G.S. 20-37.6(d) would not be compatible with the unique visual character of the property. Upon filing of the certification with the Department of Transportation, the owner may cause to be erected signs of materials and colors different from signs R7-8 and R7-8a. The signs shall be the same size and shape as signs R7-8 or R7-8a, as appropriate, with the same letters, words, numbers, and symbols, except for the statement of the maximum penalty for parking in a parking space for the physically handicapped or visually impaired in violation of the law. Such signs shall be deemed to conform to G.S. 20-37.6(d).

(e) Enforcement of Handicapped Parking Privileges. -- It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons ~~or visually impaired persons~~ when the vehicle does not display the distinguishing license plate, ~~placard,~~ removable windshield placard or temporary removable windshield placard or identification card as provided in this section or a disabled veteran registration plate issued pursuant to ~~G.S. 20-81.4[;]~~ G.S. 20-81.4;

(2) For any person not qualifying for the rights and privileges extended to handicapped ~~or visually impaired~~ persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, ~~placard, or identification card~~ removable windshield placard, or temporary removable windshield placard issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32).

(f) Penalties for Violation. --

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be *prima facie* evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any such nonconforming sign or markings are being used it shall be *prima facie* evidence in any court in the State of North Carolina that the person, firm, or corporation with ownership of the property where said nonconforming signs or markings are located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the

Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a security officer who has authority to enforce laws on the property of his employer as specified in Chapter 74A, may cause a vehicle parked in violation of this section to be towed; and such officer shall be a legal possessor as provided in G.S. 20-161(d)(2). This law-enforcement officer, or security officer, shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such space pursuant to this section, except where such motor vehicle is willfully, maliciously, or negligently damaged in the removal from aforesaid space to place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies."

Sec. 3. G.S. 20-37.6A reads as rewritten:

"*§ 20-37.6A. Vehicles designated for out-of-state handicapped; parking privileges.*

Any vehicle displaying an out-of-State handicapped license plate, placard or other evidence of handicap or visual impairment issued by the appropriate authority of the appropriate jurisdiction may park in any space reserved for the handicapped ~~or the visually impaired~~ pursuant to G.S. 20-37.6."

Sec. 4. G.S. 20-51 reads as rewritten:

"*§ 20-51. Exempt from registration.*

The following shall be exempt from the requirement of registration and certificate of title:

(1) Any such vehicle driven or moved upon a highway in conformance with the provisions of this Article relating to manufacturers, dealers, or nonresidents.

(2) Any such vehicle which is driven or moved upon a highway only for the purpose of crossing such highway from one property to another.

(3) Any implement of husbandry, farm tractor, road construction or maintenance machinery or other vehicle which is not self-propelled that was designed for use in work off the highway and which is operated on the highway

for the purpose of going to and from such nonhighway projects.

(4) Any vehicle owned and operated by the government of the United States.

(5) Farm tractors equipped with rubber tires and trailers or semitrailers when attached thereto and when used by a farmer, his tenant, agent, or employee in transporting his own farm implements, farm supplies, or farm products from place to place on the same farm, from one farm to another, from farm to market, or from market to farm. This exemption shall extend also to any tractor, implement of husbandry, and trailer or semitrailer while on any trip within a radius of 10 miles from the point of loading, provided that the vehicle does not exceed a speed of 35 miles per hour. This section shall not be construed as granting any exemption to farm tractors, implements of husbandry, and trailers or semitrailers which are operated on a for-hire basis, whether money or some other thing of value is paid or given for the use of such tractors, implements of husbandry, and trailers or semitrailers.

(6) Any trailer or semitrailer attached to and drawn by a properly licensed motor vehicle when used by a farmer, his tenant, agent, or employee in transporting unginned cotton, peanuts, soybeans, corn, hay, tobacco, silage, cucumbers, potatoes, fertilizers or chemicals purchased or owned by such farmer or tenant for personal use in implementing husbandry or irrigation pipes and equipment owned by such farmer or tenant from place to place on the same farm, from one farm to another, from farm to gin, from farm to dryer, or from farm to market, and when not operated on a for-hire basis. The term 'transporting' as used herein shall include the actual hauling of said products and all unloaded travel in connection therewith.

(7) Those small farm trailers known generally as tobacco-handling trailers, tobacco trucks or tobacco trailers when used by a farmer, his tenant, agent or employee, when transporting or otherwise handling tobacco in connection with the pulling, tying or curing thereof.

(8) Any vehicle which is driven or moved upon a highway only for the purpose of crossing or traveling upon such highway from one side to the other provided the owner or lessee of the vehicle owns the fee or a leasehold in all the land along both sides of the highway at the place or crossing.

(9) Mopeds as defined in G.S. 20-4.01(27)d1.

(10) Devices which are designed for towing private passenger motor vehicles or vehicles not exceeding 5,000 pounds gross weight. These devices are known generally as 'tow dollies.' A tow dolly is a two-wheeled device without motive power designed for towing disabled motor vehicles and is drawn by a motor vehicle in the same manner as a trailer.

(11) Devices generally called converter gear or dollies consisting of a tongue attached to either a single or tandem axle upon which is mounted a fifth wheel and which is used to convert a semitrailer to a full trailer for the purpose of being drawn behind a truck tractor and semitrailer.

(12) Motorized wheelchairs or similar vehicles not exceeding 1,000 pounds gross ~~weight.~~ weight when used for pedestrian purposes by a handicapped person with a mobility impairment as defined in G.S. 20-37.5."

Sec. 5. G.S. 20-37.2, 20-37.3, and 20-37.4 are repealed.

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 448 **CHAPTER 412**

AN ACT TO AUTHORIZE THE ISSUANCE OF STOP-WORK ORDERS FOR VIOLATIONS OF THE SEDIMENTATION POLLUTION CONTROL ACT OF 1973.

The General Assembly of North Carolina enacts:

Section 1. Article 4 of Chapter 113A of the General Statutes is amended by adding a new section to read:

"*§ 113A-65.1. Stop-work orders.*

(a) The Secretary may issue a stop-work order if he finds that a land-disturbing activity is being conducted in violation of this Article or of any rule adopted or order issued pursuant to this Article, that the violation is knowing and willful, and that either:

(1) Off-site sedimentation has eliminated or severely degraded a use in a lake or natural watercourse or that such degradation is imminent.

(2) Off-site sedimentation has caused severe damage to adjacent land or that such damage is imminent.

(3) The land-disturbing activity is being conducted without an approved plan.

(b) The stop-work order shall be in writing and shall state what work is to be stopped and what measures are required to abate the violation. The order shall include a statement of the findings made by

the Secretary pursuant to subsection (a) of this section, and shall list the conditions under which work that has been stopped by the order may be resumed. The delivery of equipment and materials which does not contribute to the violation may continue while the stop-work order is in effect. A copy of this section shall be attached to the order.

(c) The stop-work order shall be served by the sheriff of the county in which the land-disturbing activity is being conducted or by some other person duly authorized by law to serve process as provided by G.S. 1A-1, Rule 4, and shall be served on the person at the site of the land-disturbing activity who is in operational control of the land-disturbing activity. The sheriff or other person duly authorized by law to serve process shall post a copy of the stop-work order in a conspicuous place at the site of the land-disturbing activity. The Department shall also deliver a copy of the stop-work order to any person that the Department has reason to believe may be responsible for the violation.

(d) The directives of a stop-work order become effective upon service of the order. Thereafter, any person notified of the stop-work order who violates any of the directives set out in the order may be assessed a civil penalty as provided in G.S. 113A-64(a). A stop-work order issued pursuant to this section may be issued for a period not to exceed three days.

(e) The Secretary shall designate an employee of the Department to monitor compliance with the stop-work order. The name of the employee so designated shall be included in the stop-work order. The employee so designated, or the Secretary, shall rescind the stop-work order if all the violations for which the stop-work order are issued are corrected, no other violations have occurred, and all measures necessary to abate the violations have been taken. The Secretary shall rescind a stop-work order that is issued in error.

(f) The issuance of a stop-work order shall be a final agency decision subject to judicial review in the same manner as an order in a contested case pursuant to Article 4 of Chapter 150B of the General Statutes. The petition for judicial review shall be filed in the superior court of the county in which the land-disturbing activity is being conducted.

(g) As used in this section, days are computed as provided in G.S. 1A-1, Rule 6. Except as otherwise provided, the Secretary may delegate any power or duty under this section to the Director of the Division of Land Resources of the Department or to any person who has supervisory authority over the Director. The Director may delegate any power or duty so delegated only to a person who is designated as acting Director.

(h) The Attorney General shall file a cause of action to abate the violations which resulted in the issuance of a stop-work order within two days of the service of the stop-work order. The cause of action shall include a motion for an **ex parte** temporary restraining order to abate the violation and to effect necessary remedial measures. The resident superior court judge, or any judge assigned to hear the motion for the temporary restraining order, shall hear and determine the motion within two days of the filing of the complaint. The clerk of superior court shall accept complaints filed pursuant to this section without the payment of filing fees. Filing fees shall be paid to the clerk of superior court within 30 days of the filing of the complaint."

Sec. 2. G.S. 113A-64(a) reads as rewritten:

"(a) Civil Penalties.

(1) Any person who violates any of the provisions of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or by a local government, or who initiates or continues a land-disturbing activity for which an erosion control plan is required except in accordance with the terms, conditions, and provisions of an approved plan, shall be subject to a civil penalty of not more than five hundred dollars ($500.00), except that the penalty for failure to submit an erosion control plan shall be as provided in subdivision (4) of this ~~subsection.~~ subsection and the penalty for violating a stop-work order shall be as provided in subdivision (5) of this subsection. No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall constitute a separate violation.

(2) The Secretary, for violations under the Commission's jurisdiction, or the governing body of any local government having jurisdiction, shall determine the amount of the civil penalty to be assessed under ~~G.S. 113A-64(a)~~ this subsection and shall make written demand for payment upon the person responsible for the violation, and shall set forth in detail the violation for which the penalty has been invoked. If payment is not received or equitable settlement reached within 30 days after demand for payment is made, the Secretary shall refer the matter to the Attorney General for the institution of a civil action in the name of the State in the superior court of the county in which the violation is alleged to have occurred to recover the amount of the ~~penalty, and local~~ penalty. Local governments shall refer such matters to their respective attorneys for the institution of a civil action in the name of the local government in the

appropriate division of the General Court of Justice of the county in which the violation is alleged to have occurred for recovery of the penalty. Any sums recovered shall be used to carry out the purposes and requirements of this Article.

(3) In determining the amount of the penalty, the Secretary shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, the amount of money the violator saved by his noncompliance, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with this Article.

(4) Any person who fails to submit an erosion control plan for approval by the Commission pursuant to G.S. 113A-54(d)(4) or by a local government pursuant to G.S. 113A-61 shall be subject to a single, noncontinuing civil penalty of not more than one thousand dollars ($1,000). Any penalty which is recovered pursuant to this subdivision shall be deposited in the General Fund. Any person who is subject to a civil penalty under this subdivision may be subject to additional civil penalties for violation of any other provision of this Article or any ordinance, rule, or order adopted or issued pursuant to this Article by the Commission or a local government.

(5) Any person who violates a stop-work order issued pursuant to G.S. 113A-65.1 shall be subject to a civil penalty of not more than five thousand dollars ($5,000). No penalty shall be assessed until the person alleged to be in violation has been notified of the violation. Each day of a continuing violation shall be a separate violation."

Sec. 3. This act becomes effective 1 October 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 463 **CHAPTER 413**

AN ACT TO ADD ADDITIONAL ANABOLIC STEROIDS TO THE LIST OF CONTROLLED SUBSTANCES AND TO MAKE OTHER CHANGES TO CONFORM STATE LAW WITH THE FEDERAL LAW REGARDING THE CONTROL OF ANABOLIC STEROIDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-91(k) reads as rewritten:

"(k) ~~Any anabolic steroids, unless dispensed with a prescription by a registered pharmacist.~~ Anabolic steroids. The term 'anabolic

steroid' means any ~~material, compound, mixture, or preparation containing an anabolic steroid,~~ drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone deconoate,
6. Testosterone propionate, ~~and~~
7. Chorionic ~~gonadotropin.~~ gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlortestosterone),
10. Clostebol,
11. Dehydrochlormethyltestostorone,
12. Dibydrostestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebulone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for

human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 708 **CHAPTER 414**

AN ACT TO AMEND THE DATE OF PERFECTION FOR MOTOR VEHICLE LIENS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-58.2 reads as rewritten:

"*§ 20-58.2. Date of perfection.*

If the application for notation of security interest with the required fee is delivered to the Division within ~~10~~ 20 days after the date of the security agreement, the security interest is perfected as of ~~that date,~~ the date of the execution of the security agreement. Otherwise, the security interest is perfected as of the date of delivery of the application to the Division."

Sec. 2. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 786 **CHAPTER 415**

AN ACT TO PROVIDE THAT A VIOLATION OF AN ORDINANCE ADOPTED BY A METROPOLITAN SEWERAGE DISTRICT IS A MISDEMEANOR OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-4(a) reads as rewritten:

"(a) Except as provided in subsection (b), if any person shall violate an ordinance of a county, city, ~~or town,~~ town, or metropolitan sewerage district created under Article 5 of Chapter 162A, he shall be guilty of a misdemeanor and shall be fined not more than fifty dollars ($50.00), or imprisoned for not more than 30 days."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 959 **CHAPTER 416**

AN ACT CONCERNING REQUIRED TRAINING OF SUPERVISORS EMPLOYED BY THE STATE WITHIN THE FIRST YEAR OF APPOINTMENT OR PROMOTION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 126 of the General Statutes is amended by adding a new section to read:

"*§ 126-16.1. Equal employment opportunity training.*

Each State agency, each State department, and The University of North Carolina shall:

(1) Enroll each newly appointed supervisor or manager within one year of appointment in the Equal Employment Opportunity Institute operated by the Division of Equal Opportunity Services of the Office of State Personnel. Current managers and supervisors are encouraged to enroll/participate in the Institute.

(2) Be responsible for providing supplies and resource materials for managers and supervisors who are enrolled from that department, agency or university."

Sec. 2. The Office of State Personnel, through its Division of Equal Opportunity Services, shall implement the provisions of this act.

Sec. 3. Beginning January 1, 1992, the Office of State Personnel shall report semiannually to the Joint Legislative Commission on Governmental Operations concerning the implementation of this act.

Sec. 4. This act shall not apply to the Judicial Branch or the Legislative Branch.

Sec. 5. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

H.B. 966 **CHAPTER 417**

AN ACT TO ALLOW DISSOLUTION OF SANITARY DISTRICTS FOR WHICH NO DISTRICT BOARD MEMBERS HAVE BEEN ELECTED FOR EIGHT YEARS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-85 is amended by adding a new subsection to read:

"(a1) The County Board of Commissioners may dissolve a Sanitary District located entirely within one county and for which no District

Board members have been elected within eight years preceding dissolution, upon the following conditions:

(1) The District has no outstanding legal indebtedness;

(2) The Board of Commissioners adopts a plan providing for continued operation and provision of all services, if any, previously being performed or rendered to the District. No plan shall be adopted unless at the time of its adoption any water and sewer or sanitary system being operated by the District is in compliance with all local, State, and federal rules and regulations; and

(3) The Board of Commissioners adopts a resolution finding that the interest of the citizens of the Sanitary District and the county will be best served if the operation and the services provided by the District are provided for by the Board of Commissioners.

When all actions relating to dissolution of the sanitary district have been completed, the chairperson of the County Board of Commissioners shall notify the Department."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 26th day of June, 1991.

S.B. 155 **CHAPTER 418**

AN ACT TO IMPROVE THE ADMINISTRATIVE RULE-MAKING PROCESS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 150B of the General Statutes is amended by adding a new Article to read:

"ARTICLE 2A.

"Rules.

"Part 1. General Provisions.

"§ *150B-18. Scope and effect.*

This Article applies to an agency's exercise of its authority to adopt a rule. A rule is not valid unless it is adopted in substantial compliance with this Article.

"§ *150B-19. Restrictions on what can be adopted as a rule.*

An agency may not adopt a rule that does one or more of the following:

(1) Implements or interprets a law unless that law or another law specifically authorizes the agency to do so.

(2) Enlarges the scope of a profession, occupation, or field of endeavor for which an occupational license is required.

(3) Imposes criminal liability or a civil penalty for an act or omission, including the violation of a rule, unless a law specifically authorizes the agency to do so or a law declares that violation of the rule is a criminal offense or is grounds for a civil penalty.

(4) Repeats the content of a law, a rule, or a federal regulation.

(5) Establishes a reasonable fee or other reasonable charge for providing a service in fulfillment of a duty unless a law specifically authorizes the agency to do so or the fee or other charge is for one of the following:

a. A service to a State, federal, or local governmental unit.

b. A copy of part or all of a State publication or other document, the cost of mailing a document, or both.

c. A transcript of a public hearing.

d. A conference, workshop, or course.

e. Data processing services.

(6) Allows the agency to waive or modify a requirement set in a rule unless a rule establishes specific guidelines the agency must follow in determining whether to waive or modify the requirement.

"*§ 150B-20. Petitioning an agency to adopt a rule.*

(a) Petition. -- A person may petition an agency to adopt a rule by submitting to the agency a written rule-making petition requesting the adoption. A person may submit written comments with a rule-making petition. If a rule-making petition requests the agency to create or amend a rule, the person must submit the proposed text of the requested rule change and a statement of the effect of the requested rule change. Each agency must establish by rule the procedure for submitting a rule-making petition to it and the procedure the agency follows in considering a rule-making petition.

(b) Time. -- An agency must grant or deny a rule-making petition submitted to it within 30 days after the date the rule-making petition is submitted, unless the agency is a board or commission. If the agency is a board or commission, it must grant or deny a rule-making petition within 120 days after the date the rule-making petition is submitted.

(c) Action. -- If an agency denies a rule-making petition, it must send the person who submitted the petition a written statement of the reasons for denying the petition. If an agency grants a rule-making petition, it must inform the person who submitted the rule-making petition of its decision and must initiate rule-making proceedings. When an agency grants a rule-making petition requesting the creation or amendment of a rule, the notice of rule making it publishes in the North Carolina Register may state that the agency is initiating rule-making proceedings as the result of a rule-making petition, state the

name of the person who submitted the rule-making petition, set out the text of the requested rule change submitted with the rule-making petition, and state whether the agency endorses the proposed rule change.

(d) Review. -- Denial of a rule-making petition is a final agency decision and is subject to judicial review under Article 4 of this Chapter. Failure of an agency to grant or deny a rule-making petition within the time limits set in subsection (b) is a denial of the rule-making petition.

"*§ 150B-21. Agency must designate rule-making coordinator.*

Each agency must designate one or more rule-making coordinators to oversee the agency's rule-making functions. The coordinator must prepare notices of public hearings, coordinate access to the agency's rules, and serve as the liaison between the agency, other agencies, and the public in the rule-making process.

"Part 2. Adoption of Rules.

"*§ 150B-21.1. Procedure for adopting a temporary rule.*

(a) Adoption. -- An agency may adopt a temporary rule without prior notice or hearing or upon any abbreviated notice or hearing the agency finds practical when it finds that adherence to the notice and hearing requirements of this Part would be contrary to the public interest and that the immediate adoption of the rule is required by one or more of the following:

(1) A serious and unforeseen threat to the public health, safety, or welfare.
(2) The effective date of a recent act of the General Assembly or the United States Congress.
(3) A recent change in federal or State budgetary policy.
(4) A federal regulation.
(5) A court order.

An agency must prepare a written statement of its findings of need for a temporary rule. The statement must be signed by the head of the agency adopting the rule.

An agency must begin rule-making proceedings for a permanent rule by the day it adopts a temporary rule. An agency begins rule-making proceedings for a permanent rule by submitting to the codifier written notice of its intent to adopt a permanent rule.

(b) Review. -- When an agency adopts a temporary rule it must submit the rule, the agency's written statement of its findings of need for the rule, and the notice of intent to adopt a permanent rule to the Codifier of Rules. Within one business day after an agency submits a temporary rule, the Codifier of Rules must review the agency's written statement of findings of need for the rule to determine whether the statement of need meets the criteria listed in subsection (a). In

reviewing the statement, the Codifier of Rules may consider any information submitted by the agency or another person. If the Codifier of Rules finds that the statement meets the criteria, the Codifier of Rules must notify the head of the agency and enter the rule in the North Carolina Administrative Code.

If the Codifier of Rules finds that the statement does not meet the criteria, the Codifier of Rules must immediately notify the head of the agency. The agency may supplement its statement of need with additional findings or submit a new statement. If the agency provides additional findings or submits a new statement, the Codifier of Rules must review the additional findings or new statement within one business day after the agency submits the additional findings or new statement. If the Codifier of Rules again finds that the statement does not meet the criteria listed in subsection (a), the Codifier of Rules must immediately notify the head of the agency.

If an agency decides not to provide additional findings or submit a new statement when notified by the Codifier of Rules that the agency's findings of need for a rule do not meet the required criteria, the agency must notify the Codifier of Rules of its decision. The Codifier of Rules must then enter the rule in the North Carolina Administrative Code on the sixth business day after receiving notice of the agency's decision.

(c) Standing. -- A person aggrieved by a temporary rule adopted by an agency may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency's written statement of findings of need for the rule meets the criteria listed in subsection (a) and whether the rule meets the standards in G.S. 150B-21.9 that apply to review of a permanent rule. The court may not grant an *ex parte* temporary restraining order.

Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this subsection. A person who files an action for declaratory judgment under this subsection must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(d) Effective Date and Expiration. -- A temporary rule becomes effective on the date specified in G.S. 150B-21.3. A temporary rule expires on the date specified in the rule or 180 days from the date the rule becomes effective, whichever comes first.

"*§ 150B-21.2. Procedure for adopting a permanent rule.*

(a) Notice. -- Before an agency adopts a permanent rule, it must publish notice of its intent to adopt a permanent rule in the North Carolina Register and as required by any other law. The notice

published in the North Carolina Register must include all of the following:

(1) Either the text of the proposed rule or a statement of the subject matter of the proposed rule making.

(2) A short explanation of the reason for the proposed action.

(3) A citation to the law that gives the agency the authority to adopt the proposed rule, if the notice includes the text of the proposed rule, or a citation to the law that gives the agency the authority to adopt a rule on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.

(4) The proposed effective date of the proposed rule, if the notice includes the text of the proposed rule, or the proposed effective date of a rule adopted on the subject matter of the proposed rule making, if the notice includes only a statement of the subject matter of the proposed rule making.

(5) The date, time, and place of any public hearing scheduled on the proposed rule or subject matter of the proposed rule making.

(6) Instructions on how a person may demand a public hearing on a proposed rule if the notice does not schedule a public hearing on the proposed rule and subsection (c) requires the agency to hold a public hearing on the proposed rule when requested to do so.

(7) The period of time during which and the person to whom written comments may be submitted on the proposed rule or subject matter of the proposed rule making.

(8) If a fiscal note has been prepared for the proposed rule or will be prepared when a rule is proposed on the subject matter of the proposed rule making, a statement that a copy of the fiscal note can be obtained from the agency.

(b) Mailing List. -- An agency must maintain a mailing list of persons who have requested notice of rule making. When an agency publishes a rule-making notice in the North Carolina Register, it must mail a copy of the notice to each person on the mailing list who has requested notice of rule-making proceedings on the rule or the subject matter for rule making described in the notice. An agency may charge an annual fee to each person on the agency's mailing list to cover copying and mailing costs.

(c) Hearing. -- An agency must hold a public hearing on a rule it proposes to adopt in two circumstances and may hold a public hearing in other circumstances. When an agency is required to hold a public hearing on a proposed rule or decides to hold a public hearing on a proposed rule when it is not required to do so, the agency must

publish in the North Carolina Register a notice of the date, time, and place of the public hearing. The hearing date of a public hearing held after the agency publishes notice of the hearing in the North Carolina Register must be at least 15 days after the date the notice is published.

An agency must hold a public hearing on a rule it proposes to adopt in the following two circumstances:

(1) The agency publishes a statement of the subject matter of the proposed rule making in the notice in the North Carolina Register.

(2) The agency publishes the text of the proposed rule in the notice in the North Carolina Register and all the following apply:

a. The notice does not schedule a public hearing on the proposed rule.

b. Within 15 days after the notice is published, the agency receives a written request for a public hearing on the proposed rule.

c. The proposed rule is not part of a rule-making proceeding the agency initiated by publishing a statement of the subject matter of proposed rule making.

d. The proposed text is not a changed version of proposed text the agency previously published in the course of rule-making proceedings but did not adopt.

(d) Text After Subject-Matter Notice. -- When an agency publishes notice of the subject matter of proposed rule making in the North Carolina Register, it must subsequently publish in the North Carolina Register the text of the rule it proposes to adopt as a result of the public hearing and of any comments received on the subject matter. An agency may not publish the proposed text of a rule for which it published a subject-matter notice before the public hearing on the subject matter.

(e) Comments. -- An agency must accept comments on the text of a proposed rule published in the North Carolina Register for at least 30 days after the text is published or until the date of any public hearing held on the proposed rule, whichever is longer. An agency must accept comments on a statement of the subject matter of proposed rule making until the public hearing on the subject matter. An agency must consider fully all written and oral comments received.

(f) Adoption. -- An agency may not adopt a rule until the time for commenting on the proposed text of the rule has elapsed and may not adopt a rule if more than 12 months have elapsed since the end of the time for commenting on the proposed text of the rule. An agency may not adopt a rule that differs substantially from the text of a proposed rule published in the North Carolina Register unless the agency

publishes the text of the proposed different rule in the North Carolina Register and accepts comments on the proposed different rule for the time set in subsection (e).

An adopted rule differs substantially from a proposed rule if it does one or more of the following:

(1) Affects the interests of persons who, based on the notice published in the North Carolina Register or the proposed text of the rule, could not reasonably have determined that the rule would affect their interests.

(2) Addresses a subject matter or an issue that is not addressed in the proposed text of the rule.

(3) Produces an effect that could not reasonably have been expected based on the proposed text of the rule.

When an agency adopts a rule, it may not take subsequent action on the rule without following the procedures in this Part.

(g) Explanation. -- An agency must issue a concise written statement explaining why the agency adopted a rule if, within 30 days after the agency adopts the rule, a person asks the agency to do so. The explanation must state the principal reasons for and against adopting the rule and must discuss why the agency rejected any arguments made or considerations urged against the adoption of the rule.

(h) Record. -- An agency must keep a record of a rule-making proceeding. The record must include all written comments received, a transcript or recording of any public hearing held on the rule, and any written explanation made by the agency for adopting the rule.

"*§ 150B-21.3. Effective date of rules.*

(a) Temporary Rule. -- A temporary rule becomes effective on the date the Codifier of Rules enters the rule in the North Carolina Administrative Code.

(b) Permanent Rule. -- A permanent rule approved by the Commission becomes effective five business days after the Commission delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

A permanent rule that is not approved by the Commission becomes effective five business days after the agency adopting the rule delivers the rule to the Codifier of Rules, unless the agency adopting the rule specifies a later effective date. If the agency specifies a later effective date, the rule becomes effective on that date.

(c) OSHA Standard. -- A permanent rule concerning an occupational safety and health standard that is adopted by the Occupational Safety and Health Division of the Department of Labor and is identical to a federal regulation promulgated by the Secretary of

the United States Department of Labor becomes effective on the date the Division delivers the rule to the Codifier of Rules, unless the Division specifies a later effective date. If the Division specifies a later effective date, the rule becomes effective on that date.

"*§ 150B-21.4. Fiscal notes on rules.*

(a) State Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would require the expenditure or distribution of funds subject to the Executive Budget Act, Article 1 of Chapter 143, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Director of the Budget and obtain certification from the Director that the funds that would be required by the proposed rule change are available. The fiscal note must state the amount of funds that would be expended or distributed as a result of the proposed rule change and explain how the amount was computed. The Director of the Budget must certify a proposed rule change if funds are available to cover the expenditure or distribution required by the proposed rule change.

(b) Local Funds. -- Before an agency publishes in the North Carolina Register the proposed text of a permanent rule change that would affect the expenditures or revenues of a unit of local government, it must submit the text of the proposed rule change and a fiscal note on the proposed rule change to the Fiscal Research Division of the General Assembly, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note must state the amount by which the proposed rule change would increase or decrease expenditures or revenues of a unit of local government and must explain how the amount was computed.

(c) Errors. -- An erroneous fiscal note prepared in good faith does not affect the validity of a rule.

"*§ 150B-21.5. Circumstances when notice and rule-making hearing not required.*

(a) Amendment. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to amend a rule, without changing the substance of the rule, to do one of the following:

(1) Reletter or renumber the rule or subparts of the rule.

(2) Substitute one name for another when an organization or position is renamed.

(3) Correct a citation in the rule to another rule or law when the citation has become inaccurate since the rule was adopted because of the repeal or renumbering of the cited rule or law.

(4) Change information that is readily available to the public, such as an address or a telephone number.

(5) Correct a typographical error made in entering the rule in the North Carolina Administrative Code.

(6) Change a rule in response to a request or an objection by the Commission.

(b) Repeal. -- An agency is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to repeal a rule as a result of any of the following:

(1) The law under which the rule was adopted is repealed.

(2) The law under which the rule was adopted or the rule itself is declared unconstitutional.

(3) The rule is declared to be in excess of the agency's statutory authority.

(c) OSHA Standard. -- The Occupational Safety and Health Division of the Department of Labor is not required to publish a notice of rule making in the North Carolina Register or hold a public hearing when it proposes to adopt a rule that concerns an occupational safety and health standard and is identical to a federal regulation promulgated by the Secretary of the United States Department of Labor. The Occupational Safety and Health Division is not required to submit to the Commission for review a rule for which notice and hearing is not required under this subsection.

"*§ 150B-21.6. Incorporating material in a rule by reference.*

An agency may incorporate the following material by reference in a rule without repeating the text of the referenced material:

(1) Another rule or part of a rule adopted by the agency.

(2) All or part of a code, standard, or regulation adopted by another agency, the federal government, or a generally recognized organization or association.

(3) Material adopted to meet a requirement of the federal government.

In incorporating material by reference, the agency must designate in the rule whether or not the incorporation includes subsequent amendments and editions of the referenced material. The agency can change this designation only by a subsequent rule-making proceeding. The agency must have copies of the incorporated material available for inspection and must specify in the rule both where copies of the material can be obtained and the cost on the date the rule is adopted of a copy of the material.

A statement in a rule that a rule incorporates material by reference in accordance with former G.S. 150B-14(b) is a statement that the rule does not include subsequent amendments and editions of the referenced material. A statement in a rule that a rule incorporates

material by reference in accordance with former G.S. 150B-14(c) is a statement that the rule includes subsequent amendments and editions of the referenced material.

"§ 150B-21.7. Effect of transfer of duties or termination of agency on rules.

When a law that authorizes an agency to adopt a rule is repealed and another law gives the same or another agency substantially the same authority to adopt a rule, the rule remains in effect until the agency amends or repeals the rule. When a law that authorizes an agency to adopt a rule is repealed and another law does not give the same or another agency substantially the same authority to adopt a rule, a rule adopted under the repealed law is repealed as of the date the law is repealed.

When an executive order abolishes part or all of an agency and transfers a function of that agency to another agency, a rule concerning the transferred function remains in effect until the agency to which the function is transferred amends or repeals the rule. When an executive order abolishes part or all of an agency and does not transfer a function of that agency to another agency, a rule concerning a function abolished by the executive order is repealed as of the effective date of the executive order.

The Director of Fiscal Research of the General Assembly must notify the Codifier of Rules when a rule is repealed under this section. When notified of a rule repealed under this section, the Codifier of Rules must enter the repeal of the rule in the North Carolina Administrative Code.

"Part 3. Review by Commission.

"§ 150B-21.8. Review of rule by Commission.

(a) Temporary Rule. -- The Commission does not review a temporary rule.

(b) Permanent Rule. -- An agency must submit a permanent rule adopted by it to the Commission before the rule can be included in the North Carolina Administrative Code. The Commission reviews a permanent rule in accordance with the standards in G.S. 150B-21.9 and follows the procedure in this Part in its review of a permanent rule.

(c) Scope. -- When the Commission reviews an amendment to a rule, it may review the entire rule that is being amended. The procedure in G.S. 150B-21.12 applies when the Commission objects to a part of a rule that is within its scope of review but is not changed by a rule amendment.

"§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. -- The Commission must determine whether a rule meets all of the following criteria:

(1) It is within the authority delegated to the agency by the General Assembly.
(2) It is clear and unambiguous.
(3) It is reasonably necessary to fulfill a duty delegated to the agency by the General Assembly.

The Commission may determine if a rule submitted to it was adopted in accordance with Part 2 of this Article. The Commission must notify the agency that adopted the rule if it determines that a rule was not adopted in accordance with Part 2 of this Article and must return the rule to the agency. Entry of a rule in the North Carolina Administrative Code after review by the Commission is conclusive evidence that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. -- The Commission must review a rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month.

"*§ 150B-21.10. Commission action on permanent rule.*

At the first meeting at which a permanent rule is before the Commission for review, the Commission must take one of the following actions:

(1) Approve the rule, if the Commission determines that the rule meets the standards for review.
(2) Object to the rule, if the Commission determines that the rule does not meet the standards for review.
(3) Extend the period for reviewing the rule, if the Commission determines it needs additional information on the rule to be able to decide whether the rule meets the standards for review.

In reviewing a new rule or an amendment to an existing rule, the Commission may request an agency to make technical changes to the rule and may condition its approval of the rule on the agency's making the requested technical changes.

"*§ 150B-21.11. Procedure when Commission approves permanent rule.*

When the Commission approves a permanent rule, it must notify the agency that adopted the rule of the Commission's approval and must deliver the approved rule to the Codifier of Rules. The Commission must deliver an approved rule by the end of the month in which the Commission approved the rule, unless the agency asks the Commission to delay the delivery of the rule.

"*§ 150B-21.12. Procedure when Commission objects to a permanent rule.*

(a) Action. -- When the Commission objects to a permanent rule, it must send the agency that adopted the rule a written statement of the

objection and the reason for the objection. The agency that adopted the rule must take one of the following actions:

(1) Change the rule to satisfy the Commission's objection and submit the revised rule to the Commission.

(2) Submit a written response to the Commission indicating that the agency has decided not to change the rule.

An agency that is not a board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection. A board or commission must take one of these actions within 30 days after receiving the Commission's statement of objection or within 10 days after the board or commission's next regularly scheduled meeting, whichever comes later.

When an agency changes a rule in response to an objection by the Commission, the Commission must determine whether the change satisfies the Commission's objection. If it does, the Commission must approve the rule. If it does not, the Commission must send the agency a written statement of the Commission's continued objection and the reason for the continued objection.

A rule to which the Commission has objected remains under review by the Commission until the agency that adopted the rule decides not to satisfy the Commission's objection and makes a written request to the Commission to return the rule to the agency. When the Commission returns a rule to which it has objected, it may send to the President of the Senate and each member of the General Assembly a report of its objection to the rule.

(b) Entry In Code. -- When the Commission returns a rule to which it has objected to the agency that adopted the rule, the Commission must notify the Codifier of Rules of its action and of the basis of the Commission's objection. An agency whose rule is returned may file the rule with the Codifier of Rules. When the Codifier of Rules enters in the North Carolina Administrative Code a rule to which the Commission objected, the entry must reflect the Commission's objection and must state the standard on which the Commission based its objection.

"*§ 150B-21.13. Procedure when Commission extends period for review of permanent rule.*

When the Commission extends the period for review of a permanent rule, it must notify the agency that adopted the rule of the extension and the reason for the extension. After the Commission extends the period for review of a rule, it may call a public hearing on the rule. Within 70 days after extending the period for review of a rule, the Commission must decide whether to approve the rule, object to the rule, or call a public hearing on the rule.

"*§ 150B-21.14. Public hearing on a rule.*

The Commission may call a public hearing on a rule when it extends the period for review of the rule. At the request of an agency, the Commission may call a public hearing on a rule that is not before it for review. Calling a public hearing on a rule not already before the Commission for review places the rule before the Commission for review. When the Commission decides to call a public hearing on a rule, it must publish notice of the public hearing in the North Carolina Register.

After a public hearing on a rule, the Commission must approve the rule or object to the rule in accordance with the standards and procedures in this Part. The Commission must make its decision of whether to approve or object to the rule within 70 days after the public hearing.

"§ *150B-21.15. Declaratory judgment action authorized when Commission objects to a permanent rule.*

(a) Standing. -- A person aggrieved by a permanent rule entered in the North Carolina Administrative Code with an objection by the Commission based on a lack of statutory authority may file an action for declaratory judgment in Wake County Superior Court pursuant to Article 26 of Chapter 1 of the General Statutes. In the action, the court shall determine whether the agency exceeded its authority in adopting the rule.

A declaratory judgment action under this section must be filed within 90 days after the rule that is the subject of the action is entered in the Code. Filing a petition for rule making or a request for a declaratory ruling with the agency that adopted the rule is not a prerequisite to filing an action under this section. A person who files an action for declaratory judgment under this section must serve a copy of the complaint on the agency that adopted the rule being contested, the Codifier of Rules, and the Commission.

(b) Record. -- Within 10 days after a declaratory judgment action is filed under this section, the agency that adopted the rule that is the subject of the action must send to the court the original or a certified copy of the record in the Commission's review of the rule. The record consists of the rule, the Commission's letter of objection to the rule, the agency's written response to the Commission's letter, and any other relevant documents before the Commission when it decided to object to the rule.

(c) Effect. -- A rule remains in effect during the pendency of an action for declaratory judgment under this section unless the court suspends the rule after finding that the agency that adopted the rule has no substantial likelihood of prevailing in the action.

(d) Changes. -- While a rule is the subject of a declaratory judgment action under this section, the agency that adopted the rule

may submit to the Commission changes in the rule to satisfy the Commission's objection. If the Commission determines that changes submitted to it satisfy its objection, the Commission must accept the changes and file the revised rule with the Codifier of Rules. The Codifier must then enter the rule in the North Carolina Administrative Code. When the Commission determines that changes submitted to it satisfy its objection, the agency that submitted the changes must notify the court of the changes and of the Commission's action.

"Part 4. Publication of Code and Register.

"*§ 150B-21.17. North Carolina Register.*

(a) Content. -- The Codifier of Rules must publish the North Carolina Register. The North Carolina Register must be published at least two times a month and must contain the following:

(1) Notices of proposed adoptions of rules.

(2) Notices of receipt of a petition for municipal incorporation, as required by G.S. 120-165.

(3) Executive orders of the Governor.

(4) Final decision letters from the United States Attorney General concerning changes in laws that affect voting in a jurisdiction subject to § 5 of the Voting Rights Act of 1965, as required by G.S. 120-30.9H.

(5) Orders of the Tax Review Board issued under G.S. 105-241.2.

(6) Other information the Codifier determines helpful to the public.

(b) Form. -- When an agency publishes notice in the North Carolina Register of the proposed text of a new rule, the Codifier of Rules must publish the complete text of the proposed new rule. In publishing the text of a proposed new rule, the Codifier must indicate the rule is new by underlining the proposed text of the rule.

When an agency publishes notice in the North Carolina Register of the proposed text of an amendment to an existing rule, the Codifier must publish the complete text of the rule that is being amended unless the Codifier determines that publication of the complete text of the rule being amended is not necessary to enable the reader to understand the proposed amendment. In publishing the text of a proposed amendment to a rule, the Codifier must indicate deleted text with overstrikes and added text with underlines.

When an agency publishes notice in the North Carolina Register of the proposed repeal of an existing rule, the Codifier must publish the complete text of the rule the agency proposes to repeal unless the Codifier determines that publication of the complete text is impractical. In publishing the text of a rule the agency proposes to repeal, the Codifier must indicate the rule is to be repealed.

"§ *150B-21.18. North Carolina Administrative Code.*

The Codifier of Rules must compile all rules into a Code known as the North Carolina Administrative Code. The format and indexing of the Code must conform as nearly as practical to the format and indexing of the North Carolina General Statutes. The Codifier must publish printed copies of the Code and may publish the Code in other forms. The Codifier must keep the Code current by publishing the Code in a loose-leaf format and periodically providing new pages to be substituted for outdated pages, by publishing the Code in volumes and periodically publishing cumulative supplements, or by another means. The Codifier must keep superseded rules.

"§ *150B-21.19. Requirements for including rule in Code.*

To be acceptable for inclusion in the North Carolina Administrative Code, a rule must:

(1) Cite the law under which the rule is adopted.

(2) Be signed by the head of the agency or the rule-making coordinator for the agency that adopted the rule.

(3) Be in the physical form specified by the Codifier of Rules.

(4) Have been reviewed by the Commission, if the rule is a permanent rule.

"§ *150B-21.20. Codifier's authority to revise form of rules.*

(a) Authority. -- After consulting with the agency that adopted the rule, the Codifier of Rules may revise the form of a rule submitted for inclusion in the North Carolina Administrative Code within 10 business days after the rule is submitted to do one or more of the following:

(1) Rearrange the order of the rule in the Code or the order of the subsections, subdivisions, or other subparts of the rule.

(2) Provide a catch line or heading for the rule or revise the catch line or heading of the rule.

(3) Reletter or renumber the rule or the subparts of the rule in accordance with a uniform system.

(4) Rearrange definitions and lists.

(5) Make other changes in arrangement or in form that do not change the substance of the rule and are necessary or desirable for a clear and orderly arrangement of the rule.

(b) Effect. -- Revision of a rule by the Codifier of Rules under this section does not affect the effective date of the rule or require the agency to readopt or resubmit the rule. When the Codifier of Rules revises the form of a rule, the Codifier of Rules must send the agency that adopted the rule a copy of the revised rule. The revised rule is the official rule.

"§ *150B-21.21. Publication of rules of North Carolina State Bar and exempt agencies.*

(a) State Bar. -- The North Carolina State Bar must submit a rule adopted or approved by it and entered in the minutes of the North Carolina Supreme Court to the Codifier of Rules for inclusion in the North Carolina Administrative Code. The State Bar must submit a rule within 15 days after it is entered in the minutes of the Supreme Court. The Codifier of Rules must compile, make available for public inspection, and publish a rule included in the North Carolina Administrative Code under this subsection in the same manner as other rules in the Code.

(b) Exempt Agencies. -- Notwithstanding G.S. 150B-1, the North Carolina Utilities Commission must submit to the Codifier of Rules those rules of the Utilities Commission that are published from time to time in the publication titled 'North Carolina Utilities Laws and Regulations.' The Utilities Commission must submit a rule required to be included in the Code within 15 days after it is adopted. The Codifier of Rules must publish the rules submitted by the Utilities Commission in the North Carolina Administrative Code in the same format as they are submitted.

Notwithstanding G.S. 150B-1, an agency other than the Utilities Commission that is exempted from this Article by that statute must submit a temporary or permanent rule adopted by it to the Codifier of Rules for inclusion in the North Carolina Administrative Code. One of these exempt agencies must submit a rule to the Codifier of Rules within 15 days after it adopts the rule. The Codifier of Rules must compile, make available for public inspection, and publish a rule of one of these agencies in the North Carolina Administrative Code in the same manner as other rules in the Code.

"*§ 150B-21.22. Effect of inclusion in Code.*

Official or judicial notice can be taken of a rule in the North Carolina Administrative Code and shall be taken when appropriate. Codification of a rule in the North Carolina Administrative Code is *prima facie* evidence of compliance with this Article.

"*§ 150B-21.23. Rule publication manual.*

The Codifier of Rules must publish a manual that sets out the form and method for publishing a notice of rule making in the North Carolina Register and for filing a rule in the North Carolina Administrative Code.

"*§ 150B-21.24. Free copies of Register and Code.*

(a) Register. -- The Codifier of Rules must distribute copies of the North Carolina Register as soon after publication as practical, without charge, to the following:

(1) A person who receives a free copy of the North Carolina Administrative Code.

(2) Upon request, one copy to each member of the General Assembly.

(b) Code. -- The Codifier of Rules must distribute copies of the North Carolina Administrative Code as soon after publication as practical, without charge, to the following:

(1) One copy to the board of commissioners of each county, to be placed at the county clerk of court's office or at another place selected by the board of commissioners.

(2) One copy to the Commission.

(3) One copy to the Clerk of the Supreme Court and to the Clerk of the Court of Appeals of North Carolina.

(4) One copy to the Supreme Court Library and one copy to the library of the Court of Appeals.

(5) One copy to the Administrative Office of the Courts.

(6) One copy to the Governor.

(7) Five copies to the Legislative Services Commission for the use of the General Assembly.

(8) Upon request, one copy to each State official or department to whom or to which copies of the appellate division reports are furnished under G.S. 7A-343.1.

(9) Five copies to the Division of State Library of the Department of Cultural Resources pursuant to G.S. 125-11.7.

"§ *150B-21.25. Paid copies of Register and Code.*

A person who is not entitled to a free copy of the North Carolina Administrative Code or North Carolina Register may obtain a copy by paying a fee set by the Codifier of Rules. The Codifier must set separate fees for the North Carolina Register and the North Carolina Administrative Code in amounts that cover publication, copying, and mailing costs. All monies received under this section must be credited to the General Fund."

Sec. 2. G.S. 150B-1 reads as rewritten:

"§ *150B-1. Policy and scope.*

(a) Purpose. -- ~~The policy of the State is that the three powers of government, legislative, executive, and judicial, are, and should remain, separate. The intent of this Chapter is to prevent the commingling of those powers in any administrative agency and to~~ This Chapter establishes a uniform system of administrative rule making and adjudicatory procedures for agencies. The procedures ensure that the functions of rule making, investigation, advocacy, and adjudication are not all performed by the same person in the administrative process.

(b) Rights. -- ~~The purpose of this Chapter is to establish as nearly as possible a uniform system of administrative rule making and~~

~~adjudicatory procedures for State agencies.~~ This Chapter confers procedural rights.

(c) Full Exemptions. -- This Chapter ~~shall apply to every agency, as defined in G.S. 150B-2(1), except to the extent and in the particulars that any statute, including subsection (d) of this section, makes specific provisions to the contrary.~~ applies to every agency except:

(1) The North Carolina National Guard in exercising its court-martial jurisdiction.

(2) The Department of Human Resources in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes.

(3) The Utilities Commission.

(4) The Industrial Commission.

(5) The Employment Security Commission.

(d) Exemptions From Rule Making. -- Article 2A of this Chapter does not apply to the following:

(1) The Commission.

(2) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11.

(3) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14.

(4) The Department of Revenue.

(5) The Department of Correction.

(6) The Department of Transportation.

(e) Exemptions From Contested Case Provisions. -- The contested case provisions of this Chapter apply to all agencies and all proceedings not expressly exempted from the Chapter. The contested case provisions of this Chapter do not apply to the following:

(1) The Department of Human Resources and the Department of Environment, Health, and Natural Resources in complying with the procedural safeguards mandated by Section 680 of Part H of Public Law 99-457 as amended (Education of the Handicapped Act Amendments of 1986).

(2) The Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.

(3) The North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.

(4) The North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.

(5) Hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder. G.S. 150B-51(a) is considered a contested case hearing provision that does not apply to these hearings.

(6) The Department of Revenue.

(7) The Department of Correction.

(8) The Department of Transportation, except as provided in G.S. 136-29.

(9) The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers.

(f) Exemption From All But Judicial Review. -- No Article in this Chapter except Article 4 applies to The University of North Carolina.

~~(1) The following are specifically exempted from the provisions of this Chapter:~~

~~a. The Administrative Rules Review Commission;~~

~~b. The Employment Security Commission;~~

~~c. The Industrial Commission;~~

~~d. The Occupational Safety and Health Review Board in all actions that do not involve agricultural employers; and~~

~~e. The Utilities Commission.~~

~~(2) The North Carolina National Guard is exempt from the provisions of this Chapter in exercising its court-martial jurisdiction.~~

~~(3) The Department of Human Resources is exempt from this Chapter in exercising its authority over the Camp Butner reservation granted in Article 6 of Chapter 122C of the General Statutes. The Department of Human Resources and the Department of Environmental, Health, and Natural Resources are exempt from Article 3 of this Chapter in complying with the procedural safeguards mandated by the Section 680 of Part H of P.L. 99-457 as amended (Education of the Handicapped Act Amendments of 1986).~~

~~(4) The Department of Correction is exempt from the provisions of this Chapter, except for Article 5 of this Chapter and G.S. 150B-13 which shall apply.~~

~~(5) Articles 2 and 3 of this Chapter shall not apply to the Department of Revenue.~~

~~(6) Except as provided in Chapter 136 of the General Statutes, Articles 2 and 3 of this Chapter do not apply to the Department of Transportation.~~

~~(7) Article 4 of this Chapter, governing judicial review of final administrative decisions, shall apply to The University of~~

~~North Carolina and its constituent or affiliated boards, agencies, and institutions, but The University of North Carolina and its constituent or affiliated boards, agencies, and institutions are specifically exempted from the remaining provisions of this Chapter.~~

~~(8) Article 4 of this Chapter shall not apply to the State Banking Commission, the Commissioner of Banks, the Savings Institutions Division of the Department of Economic and Community Development, and the Credit Union Division of the Department of Economic and Community Development.~~

~~(9) Article 3 of this Chapter shall not apply to agencies governed by the provisions of Article 3A of this Chapter, as set out in G.S. 150B-38(a).~~

~~(10) Articles 3 and 3A of this Chapter shall not apply to the Governor's Waste Management Board in administering the provisions of G.S. 104E-6.2 and G.S. 130A-293.~~

~~(11) Article 2 of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-10 and G.S. 104G-11. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Low-Level Radioactive Waste Management Authority in administering the provisions of G.S. 104G-9, 104G-10, and 104G-11.~~

~~(12) Article 2 of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-13 and G.S. 130B-14. Articles 3 and 3A of this Chapter shall not apply to the North Carolina Hazardous Waste Management Commission in administering the provisions of G.S. 130B-11, 130B-13, and 130B-14.~~

~~(13) Article 3 of this Chapter and G.S. 150B-51(a) shall not apply to hearings required pursuant to the Rehabilitation Act of 1973, (Public Law 93-122), as amended and federal regulations promulgated thereunder.~~"

Sec. 3. G.S. 150B-2 reads as rewritten:

"§ *150B-2. Definitions.*

As used in this Chapter,

(01) 'Administrative law judge' means a person appointed under G.S. 7A-752, 7A-753, or 7A-757.

(1) 'Agency' means ~~any agency, institution, board, commission, bureau, department, division, council, member of the Council of State, or officer of the State government of the State of North Carolina but does not~~

~~include any agency in the legislative or judicial branch of the State government; and does not include counties, cities, towns, villages, other municipal corporations or political subdivisions of the State or any agencies of such subdivisions, or local boards of education, other local public districts, units or bodies of any kind, or private corporations created by act of the General Assembly.~~ an agency or an officer in the executive branch of the government of this State and includes the Council of State, the Governor's Office, a board, a commission, a department, a division, a council, and any other unit of government in the executive branch. A local unit of government is not an agency.

(1a) 'Adopt' means to take final action to create, amend, or repeal a rule.

(1b) 'Codifier of Rules' means the Chief Administrative Law Judge of the Office of Administrative Hearings or a designated representative of the Chief Administrative Law Judge.

(1c) 'Commission' means the Rules Review Commission.

(2) 'Contested case' means an administrative proceeding pursuant to this Chapter to resolve a dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty. 'Contested case' does not include rule-making, declaratory rulings, or the award or denial of a scholarship or grant.

~~(2a) 'Effective' means that a valid rule has been filed as required by G.S. 150B-59 and, if applicable, that the time specified in that section has elapsed. A rule that is effective is enforceable to the extent permitted by law.~~

(2b) 'Hearing officer' means a person or group of persons designated by an agency that is subject to Article 3A of this Chapter to preside in a contested case hearing conducted under that Article.

(3) 'License' means any certificate, permit or other evidence, by whatever name called, of a right or privilege to engage in any activity, except licenses issued under Chapter 20 and Subchapter I of Chapter 105 of the General Statutes and occupational licenses.

(4) 'Licensing' means any administrative action issuing, failing to issue, suspending, or revoking a license or occupational license. 'Licensing' does not include controversies over

whether an examination was fair or whether the applicant passed the examination.

(4a) 'Occupational license' means any certificate, permit, or other evidence, by whatever name called, of a right ~~of~~ or privilege to engage in a profession, occupation, or field of endeavor that is issued by an occupational licensing agency.

(4b) 'Occupational licensing agency' means any board, commission, committee or other agency of the State of North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within a particular profession, occupation or field of endeavor, and which is authorized to issue and revoke licenses. 'Occupational licensing agency' does not include State agencies or departments which may as only a part of their regular function issue permits or licenses.

(5) 'Party' means any person or agency named or admitted as a party or properly seeking as of right to be admitted as a party and includes the agency as appropriate. This subdivision does not permit an agency that makes a final decision, or an officer or employee of the agency, to petition for initial judicial review of that decision.

(6) 'Person aggrieved' means any person or group of persons of common interest directly or indirectly affected substantially in his or its person, property, or employment by an administrative decision.

(7) 'Person' means any natural person, partnership, corporation, body politic and any unincorporated association, organization, or society which may sue or be sued under a common name.

(8) 'Residence' means domicile or principal place of business.

(8a) 'Rule' means any agency regulation, ~~standard~~ standard, or statement of general applicability that implements or interprets ~~laws enacted by~~ an enactment of the General Assembly or Congress or ~~regulations promulgated~~ a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. ~~any agency not inconsistent with laws enacted by the General Assembly.~~ The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

a. Statements concerning only the internal management of an agency or group of agencies within the same principal office or department enumerated in G.S. 143-

11 or 143B-6, including policies and procedures manuals, if ~~such a~~ the statement does not directly or substantially affect the procedural or substantive rights or duties of a person ~~persons~~ not employed by the agency or group of agencies.

b. Budgets and budget policies and procedures issued by the Director of the Budget, by the head of a department, as defined by G.S. 143A-2 or G.S. 143B-3, by an occupational licensing board, as defined by G.S. 93B-1, or by the State Board of Elections.

c. Nonbinding interpretative statements within the delegated authority of ~~the~~ an agency that merely define, ~~interpret~~ interpret, or explain the meaning of a statute or rule. ~~other provision of law or precedent.~~

d. A form, the contents or substantive requirements of which are prescribed by rule or statute. ~~statute or the instructions for the execution or use of the form.~~

e. Statements of agency policy made in the context of another proceeding, including:

1. Declaratory rulings under ~~G.S. 150B-17;~~ G.S. 150B-4.

2. Orders establishing or fixing rates or tariffs.

f. ~~Statements of agency policy, provided that the agency policy is not inconsistent with any law enacted by the General Assembly,~~ Instructions, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, or facilities. ~~concerning:~~

~~1. The use or creation of public roads or bridges;~~

~~2. The boundaries of public facilities and times when public facilities are open to the public; or~~

~~3. Safety in use of public facilities.~~

g. Statements that set forth criteria or guidelines to be used by the staff of an agency in performing audits, investigations, or inspections; in settling financial disputes or negotiating financial arrangements; or in the defense, prosecution, or settlement of ~~cases;~~ cases.

h. Scientific, architectural, or engineering standards, forms, or procedures.

i. Job classification standards, job qualifications, and salaries established for positions under the jurisdiction of the State Personnel Commission.

(8b) 'Substantial evidence' means relevant evidence a reasonable mind might accept as adequate to support a conclusion.

~~(9) 'Valid' means that the rule has been adopted pursuant to the procedure required by law. A valid rule is unenforceable until it becomes effective.~~"

Sec. 4. G.S. 150B-17 is recodified as G.S. 150B-4 in Article 1 of Chapter 150B of the General Statutes.

Sec. 5. Article 2 of Chapter 150B of the General Statutes, as amended by this act, Article 5 of Chapter 150B of the General Statutes, G.S. 143B-30, and G.S. 143B-30.3 are repealed.

Sec. 6. G.S. 12-3.1(c) reads as rewritten:

"(c) This section does not apply to any of the following:

(1) ~~rules~~ Rules establishing fees or charges to State, federal or local governmental ~~units,~~ units.

(2) A ~~nor to any~~ reasonable fee or charge for copying, transcripts of public hearings, State publications, or mailing a document or other item.

(3) Reasonable registration fees covering the cost of a conference or ~~workshop,~~ workshop.

(4) Reasonable ~~or~~ user fees covering the cost of providing data processing services."

Sec. 7. G.S. 84-21 reads as rewritten:

"*§ 84-21. Organization of council; publication of rules, regulations and bylaws.*

Upon receiving notification of the election of a councilor for each judicial district, or, if such notification shall not have been received from all said districts, within 120 days after this Article shall have gone into effect, the clerk of the Supreme Court of North Carolina shall call a meeting of the councilors of whose election he shall have been notified, to be held in the City of Raleigh not less than 20 days nor more than 30 days after the date of said call; and at the meeting so held the councilors attending the same shall proceed to organize the council by electing officers, taking appropriate steps toward the adoption of rules and regulations, electing councilors for judicial districts which have failed to elect them, and taking such other action as they may deem to be in furtherance of this Article. The regular term of all officers shall be one year, but those first elected shall serve until January 1, 1935. The council shall be the judge of the election and qualifications of its own members. When the council shall have been fully organized and shall have adopted such rules, regulations and bylaws, not inconsistent with this Article, as it shall deem necessary or expedient for the discharge of its duties, the secretary-treasurer shall file with the clerk of the Supreme Court of North Carolina a certificate, to be called the 'certificate of organization,' showing the officers and members of the council, with the judicial districts which the members respectively represent, and

their post-office addresses, and the rules, regulations and bylaws adopted by it; and thereupon the Chief Justice of the Supreme Court of North Carolina, or any judge thereof, if the court be then in vacation, shall examine the said certificate and, if of opinion that the requirements of this Article have been complied with, shall cause the said certificate to be spread upon the minutes of the court; but if of opinion that the requirements of this Article have not been complied with, shall return the said certificate to the secretary-treasurer with a statement showing in what respects the provisions of this Article have not been complied with; and the said certificate shall not be again presented to the Chief Justice of the Supreme Court or any judge thereof, until any such defects in the organization of the council shall have been corrected, at which time a new certificate of organization shall be presented and the same course taken as hereinabove provided, and so on until a correct certificate showing the proper organization of the council shall have been presented, and the organization of the council accordingly completed. Upon (a) the entry of an order upon the minutes of the court that the requirements of this Article have been complied with, or (b) if for any reason the Chief Justice or judge should not act thereon within 30 days, then, after the lapse of 30 days from the presentation to the Chief Justice or judge, as the case may be, of any certificate of organization hereinbefore required to be presented by the secretary-treasurer, without either the entry of an order or the return of said certificate with a statement showing the respects in which this Article has not been complied with, the organization of the council shall be deemed to be complete, and it shall be vested with the powers herein set forth; and the certificate of organization shall thereupon forthwith be spread upon the minutes of the court. A copy of the certificate of organization, as spread upon the minutes of the court, shall be published in the next ensuing volume of the North Carolina ~~Reports.~~ Reports and in the North Carolina Administrative Code. The rules and regulations set forth in the certificate of organization, and all other rules and regulations which may be adopted by the council under this Article, may be amended by the council from time to time in any manner not inconsistent with this Article. Copies of all such rules and regulations adopted subsequently to the filing of the certificate of organization, and of all amendments so made by the council, shall be certified to the Chief Justice of the Supreme Court of North Carolina, entered by it upon its minutes, and published in the next ensuing number of the North Carolina ~~Reports:~~ Reports and in the North Carolina Administrative Code: Provided, that the court may decline to have so entered upon its minutes any of such rules, regulations and amendments which in the opinion of the Chief Justice are inconsistent with this Article."

Sec. 8. G.S. 95-131 reads as rewritten:

"*§ 95-131. Development and promulgation of standards; adoption of federal standards and regulations.*

(a) All occupational safety and health standards promulgated under the federal act by the Secretary, and any modifications, revision, amendments or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health and adopted by the Secretary, shall be adopted as the rules of the Commissioner of this State unless the Commissioner ~~shall promulgate~~ decides to adopt an alternative State rule ~~or standard~~ as effective as the federal requirement and providing safe and healthful employment in places of employment as required by the federal act and standards and regulations heretofore referred to and as provided by the Occupational Safety and Health Act of 1970. ~~All standards and rules promulgated under the federal act by the Secretary, and any modifications, revisions, or revocations in accordance with the authority conferred by the federal act, or any other federal act or agency relating to safety and health and adopted by the Secretary, shall become effective upon the date the same are filed by the Commissioner in the Office of Administrative Hearings in accordance with G.S. 150B-59.~~ Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner.

~~(b) In the event the Commissioner shall develop his own standards and regulations relating to occupational safety and health which he shall consider to be as effective and efficient as any of the federal regulations or standards, then the Commissioner may by regulation promulgate, modify, or revoke any occupational safety or health standard developed by him in the following manner:~~

~~(1) Whenever the need or desirability of promulgating a regulation or standard by the Commissioner which serves the objective of this Article is indicated by information submitted in writing to the Commissioner by any interested person, employer, employee, or representative of any organization of employers or employees or upon information derived from recognized standards-producing organizations or upon the basis of information developed by the Commissioner or otherwise available to him, he shall determine the scope of issue to be covered by such standard or regulation and the method to be followed in the development of such standard or regulation. If the Commissioner finds it desirable he may request the recommendation of the Advisory Council appointed under this Article and shall provide such Advisory Council with any proposals of his own, together with all pertinent factual~~

~~information developed by technical experts or otherwise available, including the result of research, demonstrations, experiments, and experience. Recommendations of the Advisory Council shall be submitted to the Commissioner within 90 days from the date of the receipt of such request or within such longer or shorter period as may be prescribed by the Commissioner, but in no event for a period which is longer than 270 days.~~

~~(2) When the Commissioner wishes to promulgate a regulation or standard in this section, he shall consider any proposed revisions prior to publication of proposed standards and regulations under subdivision (3) of this subsection, and may make revisions appropriate to the effectiveness of the proposed standards and regulations.~~

~~(3) The Commissioner shall, following the review provided for in subdivision (2) above, publish a notice that he intends to issue a standard or regulation modifying or revoking an occupational safety or health standard or regulation in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, and shall afford interested persons a period of 30 days after publication to submit written data or comments. The notice shall describe the content of the proposed regulation and shall state where copies of the proposed rule, regulation or standard may be obtained.~~

~~(4) On or before the last day of the period provided for the submission of written data or comment under subdivision (3) above, any interested person may file with the Commissioner written objections to the proposed regulation, rule or standard, stating the grounds therefor and requesting a public hearing on such objections. Within 30 days after the last day for filing such objections, the Commissioner shall issue a call for a public hearing on the proposed occupational safety or health rule, regulation or standard to which such objections have been filed. The notice of hearing shall be published in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem, 30 days prior to the hearing. The notice shall include the date, time, and place of the hearing and shall indicate concisely and accurately the subject matter of the proposed rule, regulation or standard to which objections have been filed. It shall also state where copies of the full text of the proposed rule, regulation or standard may be obtained.~~

(5) The hearing shall be presided over by the Commissioner or any authorized agent of the Department, or he may delegate such presiding to the Director and shall provide reasonable opportunity for reception of opinions, memoranda and advice concerning such proposed regulation, rule or standard by interested persons and organizations.

(6) Within 60 days after the expiration of the period provided for the submission of written data or comments as provided by this section, or within 60 days after the completion of any hearing held under the provision of this section, the Commissioner shall issue a regulation promulgating, modifying, or revoking such occupational safety or health standard, rule or regulation so developed by him, or make a determination that such rule, standard or regulation shall not be issued. In addition, he shall issue a statement of reasons for any changes made from the proposed regulation, rule or standard, or reasons why no regulation, rule or standard was issued. Such regulation, rule or standard may contain a provision delaying its effective date for such period (not in excess of 90 days) as the Commissioner determines may be necessary to insure that affected employers and employees will be informed of the existence of the rule, regulation or standard and of its terms and that employers affected are given an opportunity to familiarize themselves and their employees with the existence of the requirements of the rule, regulation or standard. Notice of such promulgation, modification or revocation, shall be published in the same manner as heretofore provided in this section and as related to the publication of proposed rules, regulations and standards. Copies of the Commissioner's ruling shall be made available without cost to reasonably interested parties.

(7) Upon adoption by the enactment of this Article of the occupational safety or health standards, rules or regulations, promulgated under the federal act by the Secretary, and modifications, revisions, or revocations in accordance with the authority conferred by the federal act or any other federal act or agency relating to safety and health adopted by the Secretary, such rules, regulations and standards may be issued and promulgated without meeting the requirements of publication of proposed regulations, rules or standards and without meeting the requirements of hearings as provided in this section. Notice published in the federal register, with reference to proposed change of standards, shall be deemed to be notice to employers and employees with regard to that

~~change. Hearings and the findings of the Secretary of Labor with reference to the proposed change of standards, shall be substituted for the hearing and findings of the Commissioner.~~

~~(c) (1) The Commissioner shall provide, without regard to the aforementioned subdivision in this section, for an emergency temporary standard to take immediate effect upon publication of such emergency temporary standard in one newspaper of general circulation in Asheville, Charlotte, Durham, Greensboro, Raleigh, Wilmington and Winston-Salem if he determines (i) that employees are exposed to grave danger from exposure to substances or agents determined to be toxic or physically harmful or from new hazards, and (ii) that such emergency standard is necessary to protect employees from such danger.~~

~~(2) Emergency standards may cover issues not dealt with by statutes or regulations in existence and may displace standards heretofore promulgated.~~

~~(3) Any such emergency temporary standard shall be effective until superseded by a standard promulgated in accordance with the procedures prescribed in subdivision (4) of this subsection.~~

~~(4) Upon publication of such emergency temporary standard, the Commissioner shall commence a proceeding in accordance with G.S. 95-131(c) of this Article, and the emergency standard as published shall also serve as a proposed regulation for the proceeding. He shall thereupon promulgate a standard under this subdivision no later than six months after publication of the emergency standard as provided in subdivision (1) of this subsection.~~

(d) ~~(1)~~ ~~Regulations~~ Rules adopted under this section shall provide insofar as possible the highest degree of safety and health protection for employees; other considerations shall be the latest available scientific data in the field, the feasibility of the standard, and experience gained under this and other health and safety laws. Whenever practical the standards ~~promulgated~~ established in a rule shall be expressed in terms of objective criteria and of the performance desired. In ~~promulgating~~ establishing standards dealing with toxic materials or harmful physical agents, the Commissioner, after consultation and recommendations of the Department of Human Resources, shall set a standard which most adequately assures, to the extent possible, on the basis of

the most available evidence that no employee will suffer material impairment of health or functional capacity even if such employee has regular exposure to the hazard dealt with by such standard for the period of his working life.

~~(2) Upon adoption of this Article, all rules and procedures set forth in section 6(b)(7) of the federal act will be hereinafter adopted and applied.~~

(e) The Commissioner ~~shall not develop or promulgate~~ may not adopt State standards, for products distributed or used in interstate commerce, which are different from federal standards for such products unless the ~~promulgation~~ adoption of such State standard, or standards, ~~are~~ is required by compelling local conditions and ~~do~~ does not unduly burden interstate commerce.

~~(f) Notwithstanding any other provision of this section, in the event the Commissioner shall develop any rule, regulation, scope, or standard for agricultural employers which differs from the federal regulations or standards, he shall promulgate these rules, standards and regulations pursuant to Articles 2 and 5 of Chapter 150B and Part 3 of Article 1 of Chapter 143B.~~

(g) Any rule, regulation, scope, or standard for agricultural employers adopted or promulgated prior to July 12, 1988, that differs from the federal rule, regulation, scope, or standard is repealed effective September 1, 1989, unless readopted pursuant to Chapter 150B of the General Statutes."

Sec. 9. G.S. 143B-14(b) reads as rewritten:

"(b) Except as otherwise provided ~~in the Executive Organization Act of 1973, in G.S. 120-30.28, or in G.S. 150B-11(3),~~ by law, the powers, duties, and functions of a commission ~~(including but not limited to rule making, regulation, licensing, and promulgation of rules, rates, regulations, and standards, and the rendering of findings, orders, and adjudications) shall not be~~ are not subject to the approval, review, or control of the head of the department or of the Governor. ~~Provided, however, that the provisions of this subsection shall not apply to the review of rules by the Governor's Administrative Rules Review Commission.~~"

Sec. 10. G.S. 143B-18 and G.S. 143B-20 are repealed.

Sec. 11. The catch line to G.S. 143B-30.1 and G.S. 143B-30.1(a) reads as rewritten:

"§ *143B-30.1. ~~Administrative~~ Rules Review Commission created.*

(a) The ~~Administrative~~ Rules Review Commission is created. The Commission shall consist of eight members to be appointed by the General Assembly, four upon the recommendation of the President of the Senate, and four upon the recommendation of the Speaker of the House of Representatives. These appointments shall be made in

accordance with G.S. 120-121, and vacancies in these appointments shall be filled in accordance with G.S. 120-122. Except as provided in subsection (b) of this section, all appointees shall serve two-year terms."

Sec. 12. G.S. 143B-30.2 reads as rewritten:

"§ *143B-30.2.* ~~*Review of rules.*~~ *Purpose of Commission.*

The Rules Review Commission reviews administrative rules in accordance with Chapter 150B of the General Statutes.

~~(a) Rules adopted by an agency on or after September 1, 1986, shall be submitted to the Administrative Rules Review Commission, which shall review the rule to determine whether it:~~

~~(1) Is within the authority delegated to the agency by the General Assembly;~~

~~(2) Is clear and unambiguous;~~

~~(3) Is reasonably necessary to enable the administrative agency to perform a function assigned to it by statute or to enable or facilitate the implementation of a program or policy in aid of which the rule was adopted.~~

~~Any rule filed by the 20th of a month shall be reviewed by the Commission by the last day of the next calendar month. Any rule filed after the 20th of a month shall be reviewed by the Commission by the last day of the second subsequent calendar month. The Commission may extend the time for review of a rule by a period of up to 70 days to obtain additional information on the rule. The Commission shall file notice of the extension of time for review of a rule with the agency and the Director of the Office of Administrative Hearings. A rule may not be presented for filing with the Director of the Office of Administrative Hearings under G.S. 150B-59 unless the rule has been reviewed by the Commission as provided in this section.~~

~~(b) If the Commission reviews a rule and determines that it is within the authority delegated to the agency, is clear and unambiguous, and is reasonably necessary, the Commission shall note its approval, notify the agency, and file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.~~

~~(c) If the Commission finds that an agency did not act within the authority delegated to it in promulgating a rule or a part of a rule, or that a rule is not clear and unambiguous, or that a rule is unnecessary, the Commission shall object and delay the filing of the rule or part of the rule under G.S. 150B-59 for a period not to exceed 90 days. The Commission shall send to the agency, the Governor, the President of the Senate, the Speaker of the House of Representatives, and the Director of the Office of Administrative Hearings, a written report of the objection and delay of the rule or its part and the reasons~~

for the delay. An agency may not present a rule or part of a rule that has been delayed to the Director of the Office of Administrative Hearings for filing under G.S. 150B-59, and a rule or its part that is delayed is not "effective," as defined in G.S. 150B-2(2a).

(d) Within 30 days after receipt of the Commission's written report as authorized by (c), the agency shall either (1) revise the rule to remove the cause of the objections of the Commission and return the revised rule to the Commission or (2) return the rule to the Commission without change with the Commission's objections attached; provided, however, that in the case of a board, committee, council, or commission the response is due within 30 days after receipt of the Commission's written report or within 10 days following the next regularly scheduled meeting of the board, committee, council, or commission, whichever time period is greater. The Commission shall determine whether a revision removes its objections to the rule.

(e) If the Commission determines that a revision of a rule has removed the Commission's objections, the Commission shall note its approval and return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section.

(f) Regardless of whether the agency returns the rule to the Commission without change instead of revising the rule to remove the Commission's objections or whether the Commission determines that a revision of a rule has not removed its objections, the Commission shall note its review of and objection to the rule once 90 days have passed since the Commission objected and delayed the filing of the rule or part of the rule pursuant to G.S. 143B-30.2(c) and shall return the rule to the agency. The agency may then file the rule with the Director of the Office of Administrative Hearings under G.S. 150B-59, and the rule shall become effective as provided in that section. If the agency did not remove the Commission's objections to the rule or part of the rule, the Commission may send to the President of the Senate and the Speaker of the House of Representatives a written report of its objections to the rule. Thereafter, if the General Assembly enacts legislation disapproving the rule, the rule shall no longer be effective.

The Legislative Services Officer shall send a copy of any law disapproving a rule to the agency and the Director of the Office of Administrative Hearings as soon as a copy is available.

(g) While the filing of a rule or its part is delayed, the agency that promulgated it may not adopt another rule, including a temporary rule, that has substantially identical provisions to those for which the Commission delayed the filing of the original rule or part of a rule.

~~(h) The filing of an amendment to a rule places the entire rule before the Commission for its review.~~

~~(i) Rules adopted in accordance with the procedure in G.S. 150B-13 shall be reviewed by the Commission and are subject to objection as provided in (c).~~

~~The Commission shall review the reasons given for the adoption of a temporarty rule and may object to the rule due to the agency's failure to make the finding required by G.S. 150B-13.~~ "

Sec. 13. G.S. 120-30.48 reads as rewritten:

"§ *120-30.48. Fiscal impact of administrative ~~actions.~~ rules.*

~~(a)~~ An agency ~~subject to Article 2 of Chapter 150B of the General Statutes shall file a fiscal note for a proposed new rule, or a proposed amendment or repeal of an existing rule, that can affect the expenditures or revenues of a unit of local government. The fiscal note shall be filed with the Fiscal Research Division, the Office of State Budget and Management, the North Carolina Association of County Commissioners, and the North Carolina League of Municipalities. The fiscal note shall be filed with the entities listed no later than the date specified in G.S. 150B-11.~~

~~(b) This section shall not affect any emergency rule under G.S. 150B-13.~~ is required to prepare a fiscal note on a proposed administrative rule that affects the expenditures or revenues of a unit of local government as provided in G.S. 150B-21.4."

Sec. 14. G.S. 147-16.1 reads as rewritten:

"§ *147-16.1. Publication of executive orders.*

~~Executive orders of the Governor shall be filed and published as provided by Article 5 of Chapter 150B of the General Statutes.~~ The Governor must submit Executive Orders to the Secretary of State, who must compile, index, and publish the Executive Orders. The Governor's office shall also send a copy of each executive order to the President of the Senate, to the Speaker of the House of Representatives, to the Principal Clerk of the House of Representatives and to the Principal Clerk of the Senate."

Sec. 15. G.S. 148-11 reads as rewritten:

"§ *148-11. Authority to make regulations.*

The Secretary shall adopt rules for the government of the State prison system and shall file and publish such rules in accordance with ~~the provisions of Article 5 of~~ Chapter 150B. In the case of temporary rules, such rules shall become effective immediately upon adoption by the Secretary and shall be filed ~~in accordance with G.S. 150B-13~~ with the Codifier of Rules within two working days of adoption. The Secretary shall have such portion of these rules and regulations as pertain to enforcing discipline read to every prisoner when received in

the State prison system and a printed copy of these rules and regulations shall be made available to the prisoners."

Sec. 16. G.S. 150B-22 reads as rewritten:

"§ *150B-22. Settlement; contested case.*

It is the policy of this State that any dispute between an agency and another person that involves the person's rights, duties, or privileges, including licensing or the levy of a monetary penalty, should be settled through informal procedures. In trying to reach a settlement through informal procedures, the agency may not conduct a proceeding at which sworn testimony is taken and witnesses may be cross-examined. ~~Notwithstanding any other provision of law, if~~ If the agency and the other person do not agree to a resolution of the dispute through informal procedures, either the agency or the person may commence an administrative proceeding to determine the person's rights, duties, or privileges, at which time the dispute becomes a 'contested case.'"

Sec. 17. This act becomes effective October 1, 1991. The procedures in G.S. 150B, Article 2A, as set forth in this act, apply to all rules for which a notice of rule making is published in the North Carolina Register on or after that date, and to all rules that do not require publication of a notice of rule making and are adopted on or after that date. The Utilities Commission shall submit to the Codifier of Rules the rules of the Commission that are included in the publication "North Carolina Utilities Laws and Regulations" within 15 days after the effective date of this act.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 237 **CHAPTER 419**

AN ACT TO REQUIRE EMPLOYERS TO PROVIDE MEDICAL, HOSPITAL, AND DENTAL INSURANCE COVERAGE INFORMATION IN IV-D SUPPORT CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-139(c) reads as rewritten:

"(c) Notwithstanding any other provision of law making such information confidential, ~~a business~~ an employer doing business in this State or incorporated under the laws of this State shall provide the Department with the following information upon certification by the Department that the information is needed to locate a parent for the purpose of collecting child ~~support;~~ support or to enforce an order for child support: full name, social security account number, date of birth, home address, wages, existing or available medical, hospital,

and dental insurance coverage, and number of dependents listed for tax purposes."

Sec. 2. G.S. 50-13.11(c) reads as rewritten:

"(c) The employer or insurer of the party required to provide ~~medical~~ medical, hospital, and dental insurance shall release to the other party, upon written request, any information on a minor child's insurance coverage that the employer or insurer may release to the party required to provide ~~medical~~ medical, hospital, and dental insurance."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 273 **CHAPTER 420**

AN ACT TO AUTHORIZE THE NORTH CAROLINA STATE FIREMEN'S ASSOCIATION TO CHANGE ITS NAME AND TO HOLD PROPERTY WITH A VALUE IN EXCESS OF FORTY THOUSAND DOLLARS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 251 of the Private Laws of 1889 as amended by Section 1 of Chapter 255 of the 1949 Session Laws reads as rewritten:

"Section 1. That C. D. Benbow, J. G. Fowler, H. J. Elam, J. W. Griffith, A. T. Boyd, C. F. Thomas, J. R. Donnell, Charles Whittington and S. D. Wilson, of Greensboro, J. D. McNeill, of Fayetteville, J. T. Thacker, W. F. Keith, S. A. Link, C. A. Snipes, F. N. Vogler, F. C. Mimming, of Winston-Salem, E. B. Englehard, T. W. Blake, F. H. Lumsden and F. Brannan, of Raleigh, H. E. Heartt, of Durham, B. J. Swinston, of Charlotte, and such other persons as are associated with them and their successors, be and they hereby are constituted a body politic and corporate by the name of the North Carolina State Firemen's ~~Association,~~ Association. The corporation may change the corporate name at any time in accordance with its bylaws and applicable law. ~~and by that name~~ The corporation may sue and be sued, and prosecute and defend suits in all courts in this State, and may have and use a common ~~seal and alter the same at pleasure;~~ seal; may make contracts and shall be capable in law of purchasing, holding and conveying any real or personal estate for the use and benefit of said association or ~~corporation: Provided, that said corporation shall not at any time hold real and personal estate of a greater value than forty thousand dollars.~~ corporation."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 287 **CHAPTER 421**

AN ACT TO MAKE CHANGES TO THE EMPLOYMENT SECURITY LAW PERTAINING TO CONTRIBUTIONS AND COVERAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-9(c) is amending by adding the following new subdivision to read:

"(6) If the Commission finds that an employer's business is closed solely because of the entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or of any of its allies, or of the United Nations, such employer's experience rating account shall not be terminated; and, if the business is resumed within two years after the discharge or release from active duty in the Armed Forces of such person or persons, the employer's account shall be deemed to have been chargeable with benefits throughout more than 13 consecutive calendar months ending July 31 immediately preceding the computation date. This subdivision shall apply only to employers who are liable for contributions under the experience rating system of financing unemployment benefits. This subdivision shall not be construed to apply to employers who are liable for payments in lieu of contributions or to employers using the reimbursable method of financing benefit payments."

Sec. 2. G.S. 96-11(d) reads as rewritten:

"(d) Except as provided in G.S. 96-9(c)(6), ~~An~~ an employer who has not paid any covered wages for a period of two consecutive calendar years shall cease to be an employer subject to this Chapter. An employer who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of his account. Such termination shall be effective January 1 of any calendar year only if the Commission finds there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed one or more individuals in employment (four or more prior to January 1, 1972), not necessarily

simultaneously and irrespective of whether the same individuals were employed in each such week, and the Commission finds that there was no calendar quarter within the preceding calendar year in which the total wages of its employees were one thousand five hundred dollars ($1,500) or more, except as otherwise provided. Provided further, an employer, as the term is used in G.S. 96-8(5)k, who has not had individuals in employment and who has made due application for exemption from filing contributions and wage reports required under this Chapter and has been so exempted may be terminated from liability upon written application within 120 days after notification of the reactivation of its account. Such termination shall be effective January 1 of any calendar year only if the Commission finds that there were no 20 different weeks within the preceding calendar year, whether or not such weeks are or were consecutive, within which said employer employed four or more individuals in employment, not necessarily simultaneously and irrespective of whether the same individuals were employed in each such week. In such cases a protest of liability shall be considered as an application for termination within the meaning of this provision where the decision with respect to such protest has not become final."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 319 **CHAPTER 422**

AN ACT TO AMEND THE EMPLOYMENT SECURITY LAW PERTAINING TO WAIVER OF LATE FILING PENALTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-10(j) reads as rewritten:

"(j) The Commission shall have the power to reduce or waive any penalty provided in G.S. 96-10(a) or 96-10(g). The late filing penalty under G.S. 96-10(g) shall be waived when the mailed report bears a postmark that discloses that it was mailed by midnight of the due date but was addressed or delivered to the wrong State or federal agency. The late payment penalty and the late filing penalty imposed by G.S. 96-10(a) and G.S. 96-10(g) shall be waived where the delay was caused by any of the following:

(1) The death or serious illness of the employer or a member of his immediate family, or by the death or serious illness of the person in the employer's organization responsible for the preparation and filing of the report;

(2) Destruction of the employer's place of business or business records by fire or other casualty;

(3) Failure of the Commission to furnish proper forms upon timely application by the employer, by reason of which failure the employer was unable to execute and file the report on or before the due date;

(4) The inability of the employer or the person in the employer's organization responsible for the preparation and filing of reports to obtain an interview with a representative of the Commission upon a personal visit to the central office or any local office for the purpose of securing information or aid in the proper preparation of the report, which personal interview was attempted to be had within the time during which the report could have been executed and filed as required by law had the information at the time been obtained;

(5) The entrance of one or more of the owners, officers, partners, or the majority stockholder into the Armed Forces of the United States, or any of its allies, or the United Nations, provided that the entrance was unexpected and is not the annual two weeks training for reserves; and

(6) Other circumstances where, in the opinion of the Chairman, the Assistant Administrator, or their designees, the imposition of penalties would be inequitable.

In the waiver of any penalty, the burden shall be upon the employer to establish to the satisfaction of the Chairman, the Assistant Administrator, or their designees, that the delinquency for which the penalty was imposed was due to any of the foregoing facts or circumstances. Such waiver shall be valid and binding upon the Commission. No employer shall receive a penalty waiver within 24 months succeeding its last penalty waiver. The reason for any such reduction or waiver shall be made a part of the permanent records of the employing unit to which it applies."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 321 **CHAPTER 423**

AN ACT TO MAKE CONFORMING CHANGES TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-13(f) reads as rewritten:

"(f) (1) Benefits shall not be payable on the basis of services performed by an alien unless such alien is an individual who ~~has been~~ was lawfully admitted for permanent residence at the time such services were performed, or otherwise ~~is~~ was permanently residing in the United States under color of law at the time such services were performed, or was lawfully present for purposes of performing such services (including an alien who is lawfully present in the United States as a result of the application of the provisions of section 203 (a)(7) or section 212 (d)(5) of the Immigration and Nationality Act). Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits. In the case of an individual whose application for benefits would otherwise be approved, no determination that compensation to such individual is not payable because of his alien status shall be made except upon a preponderance of the evidence.

(2) An individual who is not a citizen or national of the United States shall not be deemed available for work under subsection (a)(3) of this section unless the individual is in satisfactory immigration status under the laws administered by the United States Department of Justice, Immigration and ~~Nationalization~~ Naturalization Service."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 581 **CHAPTER 424**

AN ACT TO AMEND THE LIFE AND ACCIDENT AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-62-10 reads as rewritten:

"*§ 58-62-10. Scope.*

(a) This Article shall apply to direct life policies, accident and health insurance policies, annuity contracts, variable contracts, and contracts supplemental to life and accident and health insurance policies and annuity contracts issued by persons authorized to transact insurance in this State at any time.

(b) Coverage under this Article shall be provided to:

(1) Persons who, regardless of where they reside, except for nonresident certificate holders under group policies or contracts, are the beneficiaries, assignees, or payees of the persons covered under subdivision (2); and

(2) Persons who are owners of or certificate holders under the policies listed in subsection (a) of this section or contracts, who:

a. Are residents of this State; or

b. Are residents of other states but only if:

1. The insurers which issued the policies or contracts are domiciled in this State;

2. These insurers never held a license or certificate of authority in the states in which these persons reside;

3. The other states have associations similar to the association created by this Article; and

4. These persons are not eligible for coverage by those associations.

~~(b)~~(c) This Article shall not apply to:

(1) Any such policies or contracts, or any part of such policies or contracts under which the risk is borne by the policyholder;

(2) Any such policy or contract or part thereof assumed by the impaired insurer under a contract of reinsurance, other than reinsurance for which assumption certificates have been issued;

(3) Any policy or contract issued by a corporation governed by the provisions of Articles 65 and 66 of this Chapter;

(4) Any policy or contract issued by a fraternal order or society."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 656 **CHAPTER 425**

AN ACT TO REQUIRE AUDITED FINANCIAL STATEMENTS FROM APPLICANTS FOR NEW MOTOR CLUB LICENSES AND TO ALLOW THE COMMISSIONER OF INSURANCE TO REQUIRE AUDITED FINANCIAL STATEMENTS WITH RENEWAL APPLICATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-69-10 reads as rewritten:

"§ *58-69-10. Applications for licenses; fees; bonds or deposits.*

Licenses hereunder shall be obtained by filing written application therefor with the Commissioner in such form and manner as the Commissioner shall require. As a prerequisite to issuance of a license:

(1) The applicant shall furnish to the Commissioner such data and information as the Commissioner may deem reasonably necessary to enable him to determine, in accordance with the provisions of G.S. 58-69-15, whether or not a license should be issued to the applicant.

(1a) If the applicant has never been issued a motor club license it shall be required to submit an audited financial statement. If the applicant has previously been licensed the Commissioner may require that the financial statement be audited if it is reasonably necessary to determine whether or not a license should be issued to the applicant.

(2) If the applicant is a motor club it shall be required to pay to the Commissioner an annual license fee of two hundred dollars ($200.00) and to deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars ($50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars ($50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto, and upon the good faith performance by the applicant of its contracts for motor club services.

(3) If the applicant is a branch or district office of a motor club licensed under this Article it shall pay to the Commissioner a license fee of twenty dollars ($20.00).

(4) If the applicant is a franchise motor club it shall pay to the Commissioner an annual license fee of fifty dollars ($50.00) and shall deposit or file with the Commissioner a bond, in favor of the State of North Carolina and executed by a surety company duly authorized to transact business in this State, in the amount of fifty thousand dollars ($50,000), or securities of the type hereinafter specified in the amount of fifty thousand dollars ($50,000), pledged to or made payable to the State of North Carolina and conditioned upon the full compliance by the applicant with the provisions of this Article and the regulations and orders issued by the Commissioner pursuant thereto and upon the

good faith performance by the applicant of its contracts for motor club services.

(5) Any applicant depositing securities under this section shall do so in the form and manner as prescribed in Article 5 of this Chapter, and the provisions of Article 5 of this Chapter, shall be applicable to securities pledged under this Article."

Sec. 2. This act is effective upon ratification but applies to renewals of licenses beginning with those which expire June 30, 1991.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 696 **CHAPTER 426**

AN ACT TO REQUIRE EXECUTION UPON THE PROPERTY OF A DEBTOR OF A JUDGMENT DEBTOR WHEN THE EXECUTION AGAINST THE PROPERTY OF THE JUDGMENT DEBTOR IS RETURNED UNSATISFIED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-360 reads as rewritten:

"*§ 1-360. Debtors of judgment ~~debtor,~~ debtor may be summoned.*

After the ~~issuing or~~ return of an execution unsatisfied against property of the judgment debtor, or of any one of several debtors in the same judgment, and upon affidavit that any person or corporation has property of said judgment debtor, or is indebted to him in an amount exceeding ten dollars ($10.00), the court or judge may, by order, require such person or corporation, or any officer or members thereof, to appear at a specified time and place, and answer concerning the same; provided, however, that such inquiries may be answered by such person or corporation, or any officers or members thereof, by verified answers to interrogatories. The court or judge may also, in its or his discretion, require notice of the proceeding to be given to any party to the action, in such manner as seems proper."

Sec. 2. Article 31 of Subchapter X of Chapter 1 of the General Statutes is amended by adding a new section to read:

"*§ 1-360.1. Execution on the property of debtors of judgment debtor.*

After the return of an execution unsatisfied against property of the judgment debtor, or of any one of several debtors in the same judgment, and after the clerk of superior court determines to the clerk's satisfaction that the debtor of the judgment debtor acknowledged at a proceeding conducted pursuant to G.S. 1-360 that he is in possession of unencumbered property of such judgment debtor

or is indebted to him in an amount exceeding ten dollars ($10.00), an execution shall issue against the property or debt of the judgment debtor that the debtor of the judgment debtor acknowledged he holds."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 279 **CHAPTER 427**

AN ACT TO MAKE BENEFIT, ELIGIBILITY, CLARIFYING, AND OTHER TECHNICAL CHANGES IN THE TEACHERS' AND STATE EMPLOYEES' COMPREHENSIVE MAJOR MEDICAL PLAN.

The General Assembly of North Carolina enacts:

Section 1. (a) Effective October 1, 1991, G.S. 135-40.1(3) reads as rewritten:

"(3) Dependent Child. -- A natural, legally adopted, or foster child of the employee and/or spouse, unmarried, up to the first of the month following his or her 19th birthday, whether or not the child is living with the employee, as long as the employee is legally responsible for such child's maintenance and support. Dependent child shall also include any child under age 19 who has reached his or her 18th birthday, provided the employee was legally responsible for such child's maintenance and support on his or her 18th birthday.

A foster child is covered (i) if living in a regular parent-child relationship with the expectation that the employee will continue to rear the child into adulthood, (ii) if at the time of enrollment, or at the time a foster child relationship is established, whichever occurs first, the employee applies for coverage for such child and submits evidence of a bona fide foster child relationship, identifying the foster child by name and setting forth all relevant aspects of the relationship, (iii) if the Claims Processor accepts the foster child as a participant through a separate written document identifying the foster child by name and specifically recognizing the foster child relationship, and (iv) if at the time a claim is incurred, the foster child relationship, as identified by the employee, continues to exist. Children placed in a home by a welfare agency which obtains control of, and provides for maintenance of, the child(ren), are not eligible participants.

Coverage may be extended beyond the 19th birthday under the following conditions:

a. If the dependent is a full-time student, between the ages of 19 and 26, who is pursuing a course of study that represents at least the normal workload of a full-time student at a school or college accredited by the state of jurisdiction.

b. The dependent is physically or mentally incapacitated to the extent that he or she is incapable of earning a living and (i) such handicap developed or began to develop before the dependent's 19th birthday, ~~and (ii) the dependent was covered by the Plan and/or the Predecessor Plan when such handicap began and there has been no lapse in coverage since that time or, the dependent was not covered by the Predecessor Plan at the time the handicap began, but was subsequently covered by the Predecessor Plan and there has been no lapse in coverage since that time.~~ or (ii) such handicap developed or began to develop before the dependent's 26th birthday if the dependent was covered by the Plan in accordance with G.S. 135-40.1(3)a."

(b) Dependents excluded from coverage under the Teachers' and State Employees' Comprehensive Major Medical Plan because of G.S. 135-40.1(3)b. before its amendment by this act may be enrolled in the Plan in accordance with the provisions of G.S. 135-40.1(7) upon the effective date of this act.

Sec. 2. G.S. 135-39.4A(f) reads as rewritten:

"(f) The Executive Administrator may employ such clerical and professional staff, and such other assistance as may be necessary to assist the Executive Administrator and the Board of Trustees in carrying out their duties and responsibilities under this Article. The Executive Administrator may also negotiate, renegotiate and execute contracts with third parties in the performance of his duties and responsibilities under this Article; provided any contract negotiations, renegotiations and execution with a Claims Processor or with an optional prepaid hospital and medical benefit plan or with a preferred provider of institutional or professional hospital and medical care shall be done only after consultation with the Committee on Employee Hospital and Medical Benefits."

Sec. 3. G.S. 135-39.5 reads as rewritten:

"§ *135-39.5. Powers and duties of the Executive Administrator and Board of Trustees.*

The Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan shall have the following powers and duties:

(1) Supervising and monitoring of the Claims Processor.
(2) Providing for enrollment of employees in the Plan.
(3) Communicating with employees enrolled under the Plan.
(4) Communicating with health care providers providing services under the Plan.
(5) Making payments at appropriate intervals to the Claims Processor for benefit costs and administrative costs.
(6) Conducting administrative reviews under G.S. 135-39.7.
(7) Annually assessing the performance of the Claims Processor.
(8) Preparing and submitting to the Governor and the General Assembly cost estimates for the health benefits plan, including those required by Article 15 of Chapter 120 of the General Statutes.
(9) Recommending to the Governor and the General Assembly changes or additions to the health benefits program and health care cost containment programs, together with statements of financial and actuarial effects as required by Article 15 of Chapter 120 of the General Statutes.
(10) Working with State employee groups to improve health benefit programs.
(11) Repealed by Session Laws 1985, c. 732, s. 9.
(12) Determining basis of payments to health care providers, including payments in accordance with G.S. 58-260.6.
(13) Requiring bonding of the Claims Processor in the handling of State funds.
(14) Repealed by Session Laws 1985, c. 732, s. 7.
(15) In case of termination of the contract under G.S. 135-39.5A, to select a new Claims Processor, after competitive bidding procedures approved by the Department of Administration.
(16) Notwithstanding the provisions of Part 3 of this Article, to formulate and implement cost-containment measures which are not in direct conflict with that Part.
(17) Implementing pilot programs necessary to evaluate proposed cost containment measures which are not in direct conflict with Part 3 of this Article, and expending funds necessary for the implementation of such programs.
(18) Authorizing coverage for alternative forms of care not otherwise provided by the Plan in individual cases when medically necessary, medically equivalent to services

covered by the Plan, and when such alternatives would be less costly than would have been otherwise.

(19) Establishing and operating a hospital and other provider bill audit program and a fraud detection program.

(20) Determining administrative and medical policies that are not in direct conflict with Part 3 of this Article upon the advice of the Claims Processor and upon the advice of the Plan's consulting actuary when Plan costs are involved.

(21) Supervising the payment of claims and all other disbursements under this Article, including the recovery of any disbursements that are not made in accordance with the provisions of this Article."

Sec. 4. G.S. 135-39.5B reads as rewritten:

"§ *135-39.5B. Prepaid plans.*

The Executive Administrator and Board of Trustees may, after consultation with the Committee on Employee Hospital and Medical Benefits, provide for optional prepaid hospital and medical benefits plans. Benefits offered under such optional plans shall be comparable to those offered under the Plan. The amounts of State funds contributed for such optional plans shall not be more than the amounts contributed for each person eligible under G.S. 135-40.2 on a noncontributory Employee Only basis, with the person selecting an optional plan paying any excess, if necessary. The amount of State funds contributed to such optional plans shall also not exceed the amount of an optional plan's cost for Employee Only coverage. ~~The provisions of G.S. 57B-11 shall not apply to any optional prepaid hospital and medical benefits plans provided for by the Executive Administrator and Board of Trustees.~~ The Executive Administrator and Board of Trustees are authorized to assess and collect fees from participating optional plans provided by this section for administrative purposes and for risk management purposes. Such fees may be based upon the enrollees' risk factors and the number and types of contracts enrolled by each participating optional plan, and may be collected by the Plan in a manner prescribed by the Executive Administrator and Board of Trustees. In no instance shall benefits be paid under Part 3 of this Article for persons enrolled in an optional prepaid hospital and medical benefit plan authorized under this section on and after the effective date of enrollment in the optional prepaid plan, except in cases of continuous hospital confinement approved by the Executive Administrator."

Sec. 5. G.S. 135-39.6A reads as rewritten:

"§ *135-39.6A. Premiums set.*

The Executive Administrator and Board of Trustees shall, from time to time, establish premium rates for the Comprehensive Major

Medical Plan except as they may be established by the General Assembly in the Current Operations Appropriations Act, and establish regulations for payment of the premiums. Premium rates shall be established for coverages where Medicare is the primary payer of health benefits separate and apart from the rates established for coverages where Medicare is not the primary payer of health benefits."

Sec. 6. G.S. 135-39.7 reads as rewritten:

"§ *135-39.7. Administrative review.*

If, after exhaustion of internal appeal handling as outlined in the contract with the Claims Processor any person is aggrieved, the Claims Processor shall bring the matter to the attention of the Executive Administrator and Board of Trustees, which may make a binding decision on the matter in accordance with procedures established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written summary of the decisions made pursuant to this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a decision, and to any other parties requesting a written summary and approved by the Executive Administrator and Board of Trustees to receive a summary immediately following the issuance of a decision."

Sec. 7. G.S. 135-39.8 reads as rewritten:

"§ *135-39.8. Rules and regulations.*

The Executive Administrator and Board of Trustees may issue rules and regulations to implement Parts 2 and 3 of this Article. Rules and regulations of the Board of Trustees shall remain in effect until amended or repealed by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees shall provide a written description of the rules and regulations issued under this section to all employing units, all health benefit representatives, the oversight team provided for in G.S. 135-39.3, all relevant health care providers affected by a rule or regulation, and to any other parties requesting a written description and approved by the Executive Administrator and Board of Trustees to receive a description on a timely basis."

Sec. 8. G.S. 135-39.10 reads as rewritten:

"§ *135-39.10. Meaning of 'Executive Administrator and Board of Trustees'.*

Whenever in this Article the words 'Executive Administrator and Board of Trustees' appear, they mean that the Executive Administrator shall have the power, duty, right, responsibility, privilege or other function mentioned, after consulting with the Board of Trustees of the

Teachers' and State Employees' Comprehensive Major Medical ~~Plan, or its Executive Committee.~~ Plan."

Sec. 9. G.S. 135-40.1 is amended by adding a new subdivision to read:

"(7.1) Experimental/Investigational Medical Procedures. -- The use of any treatment, procedure, facility, equipment, drug, device, or supply not recognized as having scientifically established medical value nor accepted as standard medical treatment for the condition being treated as determined by the Executive Administrator and Board of Trustees upon the advice of the Claims Processor, nor any such items requiring federal or other governmental agency approval not granted at the time services were rendered. The Executive Administrator and Board of Trustees may overturn the advice of the Claims Processor upon convincing evidence from the American Medical Association, North Carolina Medical Society, the United States Health Care Financing Administration, medical technological journals, associations of health care providers, and other major United States insurers of health care expenses on a consensus of medical value and accepted standard medical treatment."

Sec. 10. Effective October 1, 1982, G.S. 135-40.3(b) is amended by adding a new subdivision to read:

"(3) Retiring employees and dependents enrolled when first eligible after an employee's retirement are subject to no waiting period for preexisting conditions under the Plan. Retiring employees not enrolled or not adding dependents when first eligible after an employee's retirement may enroll later on the first of any following month, but will be subject to a 12-month waiting period for preexisting conditions except as provided in subdivision (a)(3) of this section."

Sec. 11. G.S. 135-40.3(b) is amended by adding a new subdivision to read:

"(4) Employees and dependents reenrolled within 12 months after a termination of enrollment, regardless of the employing units involved, shall not be considered as newly-eligible employees or dependents for the purposes of waiting periods and preexisting conditions. Employees and dependents transferring from optional prepaid plans in accordance with G.S. 135-39.5B; employees and dependents immediately returning to service from an employing unit's approved periods of leave without pay for

illness, injury, educational improvement, workers' compensation, parental duties, or for military reasons; employees and dependents immediately returning to service from a reduction in an employing unit's work force; retiring employees and dependents reenrolled in accordance with G.S. 135-40.3(b)(3); formerly-enrolled dependents reenrolling as eligible employees; formerly-enrolled employees reenrolling as eligible dependents; and employees and dependents reenrolled without waiting periods and preexisting conditions under specific rules and regulations adopted by the Executive Administrator and Board of Trustees in the best interests of the Plan shall not be considered reenrollments for the purpose of this subdivision. Furthermore, employees accepting permanent, full-time appointments who had previously worked in a part-time or temporary position and their qualified dependents shall not be covered by waiting periods and preexisting conditions under this division provided enrollment as a permanent, full-time employee is made when the employee and his dependents are first eligible to enroll."

Sec. 12. G.S. 135-40.3 is amended by adding a new subsection to read:

"(e) Notwithstanding any other provision of this section, no coverage under the Plan shall become effective prior to the payment of premiums required by the Plan."

Sec. 13. G.S. 135-40.5(d) reads as rewritten:

"(d) Second Surgical Opinions. -- The Plan will pay one hundred percent (100%) of usual, reasonable and customary charges for one presurgical consultation by a second surgeon or other qualified physician as determined by the Claims Processor and Executive Administrator regarding the performance of nonemergency surgery. The Plan will also pay one hundred percent (100%) of the reasonable and customary charges for diagnostic, laboratory and x-ray examinations required by the second surgeon. Second surgical opinions for tonsillectomy and adenoidectomy procedures may be provided by Board-qualified pediatricians and family practitioners when qualified surgeons are not available to provide second surgical opinions. Should the first two opinions differ as to the necessity of surgery, the Plan will pay one hundred percent (100%) of reasonable and customary charges for the consultation of the third surgeon.

As used in this section and the provisions of G.S. 135-40.8(b), second surgical ~~opinions~~ opinions, and third surgical opinions when the first two opinions differ as to the necessity of surgery, shall be

required for the following procedures otherwise covered by the ~~Plan:~~ Plan as the primary payer of health benefits: hysterectomy, revision of the nasal structure, coronary artery bypass surgery, and surgery on the knee (except in procedures involving ~~orthoscopic~~ arthroscopic surgery when the diagnosis and the surgery can be performed in the same procedure and through the same incision). Second surgical opinions for coronary by-pass surgery may be provided by doctors who are Board-qualified in internal medicine when qualified surgeons are not available to provide a second surgical opinion. The Claims Processor may waive the requirement for obtaining a second surgical opinion required by this subsection or required by G.S. 135-40.8(b) if the location and availability of surgeons qualified to provide second opinions creates an unjust hardship or if the medical condition of the patient would be adversely affected."

Sec. 14. Effective January 1, 1986, G.S. 135-40.6(2) reads as rewritten:

"(2) Limitations and Exclusions to In-Hospital Benefits. --

a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.

b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.

c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.

d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.

e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to

secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured."

Sec. 15. Effective October 1, 1991, G.S. 135-40.6(2), as amended by Section 14 of this act, reads as rewritten:

"(2) Limitations and Exclusions to In-Hospital Benefits. --

a. The services of physicians, surgeons and technicians not employed by or under contract to the hospital are not covered.

b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ninety percent (90%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted.

c. The Plan will not cover any admission to a hospital prior to the effective date of coverage or beginning prior to the expiration of any waiting period so long as the individual remains continuously in a hospital.

d. Hospitalization for custodial, domiciliary or sanitarium care, or rest cures, is not covered.

e. Hospitalization for dental care and treatment is not covered, except when a hospital setting is medically necessary.

f. Prior to admission for scheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for an inpatient admission, including a length of stay, based upon clinical criteria established by the medical community, before any in-hospital benefits are allowed under G.S. 135-40.8(a). Immediately following an emergency or

unscheduled inpatient hospitalization, the admitting physician shall contact the Plan and secure approval certification for the admission's length of stay before any in-hospital benefits are allowed under G.S. 135-40.8(a). Effective January 1, 1987, failure to secure certification, or denial of certification, shall result in in-hospital benefits being allowed at the rate maximum amount of out-of-pocket expenses established by G.S. 135-40.8(b). Denial of certification by the Plan shall be made only after contact with the admitting physician and shall be subject to appeal to the Executive Administrator and Board of Trustees. Inpatient hospital admission and length of stay certifications required by this subdivision do not apply to inpatient admissions outside of the United States. While approval certification for inpatient admissions is required to be initiated by the admitting physician, the employee or individual covered by the Plan shall be responsible for insuring that the required certification is secured."

Sec. 16. Effective July 1, 1985, G.S. 135-40.7 is amended by adding a new subdivision to read:

"(16a) Charges in excess of negotiated rates allowed for preferred providers of institutional and professional medical care and services in accordance with the provisions of G.S. 135-40.4, when such preferred providers are reasonably available to provide institutional and professional medical care."

Sec. 17. G.S. 135-40.8(b) reads as rewritten:

"(b) Where a covered individual fails to obtain a second surgical opinion as required under the Plan, or where a covered individual elects to have a surgery performed that conflicts with a majority opinion of the rendered consultations that the surgery requiring a second or third surgical opinion is not necessary, the covered individual shall be responsible for fifty percent (50%) of the eligible expenses, provided, however, that no covered individual shall be required to pay, in addition to the expenses in subsection (a) above out-of-pocket in excess of five hundred dollars ($500.00) per fiscal year."

Sec. 18. G.S. 135-40.1(2) reads as rewritten:

"(2) Deductible. -- Deductible shall mean an amount of covered expenses during a fiscal year which must be incurred after which benefits (subject to the deductible) becomes payable. The deductible for an employee, retired employee and/or

his or her dependents shall be ~~one~~ two hundred fifty dollars ~~($150.00)~~ ($250.00) for each fiscal year.

The deductible applies separately to each covered individual in each fiscal year, subject to an aggregate maximum of ~~four~~ seven hundred fifty dollars ~~($450.00)~~ ($750.00) per family (employee or retiree and his or her covered dependents) in any fiscal year.

If two or more family members are injured in the same accident only one deductible is required for charges related to that accident during the benefit period."

Sec. 19. G.S. 135-40.4 reads as rewritten:

"§ *135-40.4. Benefits in general.*

In the event a covered person, as a result of accidental bodily injury, disease or pregnancy, incurs covered expenses, the Plan will pay benefits up to the amounts described in G.S. 135-40.5 through G.S. 135-40.9.

The Plan is divided into two parts. The first part includes certain benefits which are not subject to a deductible or coinsurance. The second part is a comprehensive plan and includes those benefits which are subject to both a ~~one~~ two hundred fifty dollar ~~($150.00)~~ ($250.00) deductible for each covered individual to an aggregate maximum of ~~four~~ seven hundred fifty dollars ~~($450.00)~~ ($750.00) per family and coinsurance of ~~90%/10%~~. 80%/20%. There is a limit on out-of-pocket expenses under the second part.

Notwithstanding the provisions of this Article, the Executive Administrator and Board of Trustees of the Teachers' and State Employees' Comprehensive Major Medical Plan may begin the process of negotiating prospective rates of charges that are to be allowed under the Plan with preferred providers of institutional and professional medical care and services. The Executive Administrator and Board of Trustees shall, under the provisions of G.S. 135-39.5(12), pursue such preferred provider contracts on a timely basis and shall make monthly reports to the President of the Senate, the Speaker of the House of Representatives, and the Committee on Employee Hospital and Medical Benefits on its progress in negotiating such prospective rates for allowable charges."

Sec. 20. G.S. 135-40.5(b) is repealed.

Sec. 21. The first paragraph of G.S. 135-40.6 is deleted and the following paragraph is inserted:

"The following benefits are subject to a deductible of two hundred fifty dollars ($250.00) per covered individual to an aggregate maximum of seven hundred fifty dollars ($750.00) per family per fiscal year and are payable on the basis of eighty percent (80%) by the Plan and twenty percent (20%) by the covered individual up to a

maximum of one thousand dollars ($1,000) out-of-pocket per fiscal year:".

Sec. 22. G.S. 135-40.6(2) is amended by adding a new subdivision to read:

"g. The Plan does not cover the first fifty dollars ($50.00) of allowable emergency room charges when admission to a hospital pursuant to the emergency room use does not immediately follow. The provisions of this subdivision shall apply only when less costly alternative means of emergency medical care are reasonably available as determined by the Executive Administrator and Board of Trustees."

Sec. 23. G.S. 135-40.6(2)b. reads as rewritten:

"b. Any admission for diagnostic tests or procedures which could be, and generally are, performed on an outpatient basis, if no hospitalization would have been required except for such diagnostic services is not covered. However, benefits are provided at ~~ninety~~ eighty percent ~~(90%)~~ (80%) of Plan benefits for diagnostic tests and procedures consistent with the symptoms or diagnosis for which admitted."

Sec. 24. G.S. 135-40.6(4) reads as rewritten:

"(4) Outpatient Benefits. -- The Plan pays for services rendered in the outpatient department of a hospital, in a doctor's office, in an ambulatory surgical facility, or elsewhere as determined by the Executive Administrator, as follows:

a. Accidental injury: All covered services. Dental services are excluded except for oral surgery specifically listed in subsection (5)c of this section.
b. Operative procedures.
c. All hospital services for radiation therapy, treatment by use of x-rays, radium, cobalt and other radioactive substances.
d. Pathological examinations of tissue removed by resection or biopsy. Routine Pap smears are not ~~covered.~~ covered by this subdivision.
e. Charges for diagnostic x-rays, clinical laboratory tests, and other diagnostic tests and procedures such as electrocardiograms and electroencephalograms.

No benefits are provided in this subdivision for screening examinations and routine physical examinations to assess general health status in the absence of specific symptoms of active illness, routine

office visits or for doctor's services for diagnostic procedures covered under surgical benefits."

Sec. 25. G.S. 135-40.6(7)a. reads as rewritten:

"a. Services of Doctors. -- The Plan pays the usual, reasonable and customary charges for covered inpatient medical (nonsurgical) services. Services are covered if the individual is hospital-confined and is eligible for hospitalization benefits as described in this section. Benefits are provided for exactly the same number of days as the individual is entitled to under this section, except that medical benefits are provided on both the day of admission and the day of discharge.

In the event a covered individual is treated by two or more co-attending doctors during the same hospital confinement for a medical (nonsurgical) condition, benefits are limited to payment for services provided by the primary attending doctor, except where need is established for supplementary skills for treatment of separate and distinct diagnoses or conditions.

Home, office, and skilled nursing facility visits including (i) charges for injected medications, (ii) inpatient care by attending medical doctors, radiologists, pathologists,and consultants during such time as hospital benefits are paid under any section of this Plan, (iii) care in the outpatient department of a hospital, and (iv) administration of shock therapy (drug or electric) including the services of anesthesiologists provided on an office or hospital outpatient basis for treatment of acute psychotic reaction or severe depression. The Plan does not cover the first ten dollars ($10.00) of allowable charges for each home, office, or skilled nursing facility visit."

Sec. 26. G.S. 135-40.6(7)d. reads as rewritten:

"d. Outpatient Psychiatric Care. -- The Plan will pay eighty percent (80%) UCR for outpatient psychiatric care, not to exceed 50 visits and two thousand two hundred dollars ($2,200) per fiscal year. This benefit is subject to the ~~one~~ two hundred fifty dollars ~~($150.00)~~ ($250.00) deductible. Payments made for this benefit are not eligible towards the maximum out-of-pocket expenditure."

Sec. 27. G.S. 135-40.6(8) is amended by adding two new subdivisions to read:

"s. Routine Diagnostic Examinations: Allowable charges for routine diagnostic examinations and tests, including Pap smears, breast, colon, rectal, and prostate exams, X rays, mammograms, blood and blood pressure checks, urine tests, tuberculosis tests, and general health checkups that are medically necessary for the maintenance and improvement of individual health but no more often than once every three years for covered individuals to age 40 years, once every two years for covered individuals to age 55 years, and once a year for covered individuals age 55 years and older, unless a more frequent occurrence is warranted by a medical condition when such charges are incurred in a medically supervised facility. Provided, however, that charges for such examinations and tests are not covered by the Plan when they are incurred to obtain or continue employment, to secure insurance coverage, to comply with legal proceedings, to attend schools or camps, to meet travel requirements, to participate in athletic and related activities or to comply with governmental licensing requirements. The maximum amount payable under this subdivision is one hundred fifty dollars ($150.00) per fiscal year.

t. Immunizations for the prevention of contagious diseases as generally accepted medical practices would dictate when directed by an attending physician."

Sec. 28. Effective January 1, 1992, G.S. 135-40.6(8)a. reads as rewritten:

"a. Prescription Drugs: ~~Prescription legend drugs in excess of the first two dollars ($2.00) per prescription for generic drugs and brand name drugs without a generic equivalent and in excess of the first three dollars ($3.00) per prescription for brand name drugs for use outside of a hospital or skilled nursing facility.~~ The Plan's allowable charges for prescription legend drugs to be used outside of a hospital or skilled nursing facility are ninety percent (90%) of the average wholesale price. A dispensing fee for qualified providers shall be determined by the Executive Administrator and Board of Trustees. The Plan will pay allowable charges for each outpatient prescription drug less a copayment to be paid by each covered individual equal to the provider dispensing fee set by the Executive Administrator and Board of Trustees. A prescription legend drug is defined as an

article the label of which, under the Federal Food, Drug, and Cosmetic Act, is required to bear the legend: 'Caution: Federal Law Prohibits Dispensing Without Prescription.' Such articles may not be sold to or purchased by the public without a prescription order. Benefits are provided for insulin even though prescription is not required."

Sec. 29. Effective January 1, 1992, G.S. 135-40.6(9)d. is repealed.

Sec. 30. G.S. 135-40.7(12) reads as rewritten:

"(12) Charges incurred for any medical observations or diagnostic study when no disease or injury is revealed, unless proof satisfactory to the Claims Processor is furnished that (i) the claim is in order in all other respects, (ii) the covered individual had a definite symptomatic condition of disease or injury other than hypochondria, and (iii) the medical observation and diagnostic studies concerned were not undertaken as a matter of routine physical examination or health ~~checkup.~~ checkup as provided in G.S. 135-40.6(8)s."

Sec. 31. Effective January 1, 1992, G.S. 135-40.6(1)r., 135-40.6(7)d., and 135-40.6A(a)(2) are repealed.

Sec. 32. Effective January 1, 1992, Article 3 of Chapter 135 of the General Statutes is amended by adding a new section to read:

"*§ 135-40.7B. Special provisions for mental health benefits.*

(a) Except as otherwise provided in this section, benefits for the treatment of mental illness are covered by the Plan and shall be subject to the same deductibles, durational limits, and coinsurance factors as are benefits for physical illness generally.

(b) Notwithstanding any other provision of this Part, the following necessary services for the care and treatment of mental illness shall be covered under this section: allowable institutional and professional charges for inpatient psychiatric care, outpatient psychotherapy, intensive outpatient crisis management, partial hospitalization treatment, and residential care and treatment. The benefits provided by this section are separate and apart from those provided by G.S. 135-40.7A.

(c) Notwithstanding any other provisions of this Part, the following providers are authorized to provide necessary care and treatment for mental illness under this section: licensed psychiatrists and doctors of psychology licensed or certified in their states of practice, psychiatric nurses or social workers or psychological associates with a master's degree in psychology under the direct employment and supervision of a licensed psychiatrist or licensed or certified doctor of psychology,

licensed psychiatric hospitals and licensed general hospitals providing psychiatric treatment programs and certified residential treatment facilities, community mental health centers, and partial hospitalization facilities.

(d) Benefits provided under this section shall be subject to a managed, individualized care component consisting of (i) inpatient utilization review through preadmission and length-of-stay certification for scheduled inpatient admissions and length-of-stay reviews for unscheduled inpatient admissions, and (ii) a network of qualified, available providers of inpatient and outpatient psychiatric treatment psychotherapy. Where qualified preferred providers of inpatient and outpatient care are reasonably available, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year to be assessed against each covered individual in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6."

Sec. 33. G.S. 135-40.8(a) reads as rewritten:

"(a) For the balance of any fiscal year after each eligible employee, retired employee, or dependent satisfies the cash deductible, the Plan pays ~~ninety~~ eighty percent ~~(90%)~~ (80%) of the eligible expenses outlined in G.S. 135-40.6. The covered individual is then responsible for the remaining ~~ten~~ twenty percent ~~(10%)~~ (20%) until ~~three hundred dollars ($300.00),~~ one thousand dollars ($1,000), in excess of the deductible, has been paid out-of-pocket. The Plan then pays one hundred percent (100%) of the remaining covered expenses."

Sec. 34. Effective January 1, 1992, G.S. 135-40.8 is amended by adding a new subsection to read:

"(d) Where a network of qualified preferred providers of inpatient and outpatient hospital care is reasonably available for use by those individuals covered by the Plan, use of providers outside of the preferred network shall be subject to a twenty percent (20%) coinsurance rate up to five thousand dollars ($5,000) per fiscal year per covered individual in addition to the general coinsurance percentage and maximum fiscal year amount specified by G.S. 135-40.4 and G.S. 135-40.6."

Sec. 35. G.S. 135-40.9 reads as rewritten:

"§ *135-40.9. Maximum benefits.*

The maximum lifetime benefit for each covered individual will be ~~five hundred thousand dollars ($500,000),~~ one million dollars ($1,000,000)."

Sec. 36. G.S. 135-40.1(12)d. reads as rewritten:

"d. It is not, other than incidentally, a place for rest, a place for the aged, a place for drug addicts, a place for

alcoholics, a nursing home, a hotel, or the like. Hospitals classified and accredited as psychiatric hospitals by the Joint Commission on Accreditation of ~~Hospitals~~ Healthcare Organizations will be deemed to be hospitals for the purpose of this Plan."

Sec. 37. G.S. 135-40.6(3) reads as rewritten:

"(3) Skilled Nursing Facility Benefits. -- The Plan will pay benefits in a skilled nursing facility which qualifies for delivery of benefits under Title ~~XVII~~ XVIII of the Social Security Act (Medicare), as follows:

After discharge from a hospital for which inpatient hospital benefits were provided by this Plan for a period of not less than three days, and treatment consistent with the same illness or condition for which the covered individual was hospitalized, the daily charges will be paid for room and board in a semiprivate room or any multibed unit up to the maximum benefit specified in subsection (1) of this section, less the days of care already provided for the same illness in a hospital. Plan allowances for total daily charges may be negotiated but will not exceed the daily semiprivate hospital room rate as determined by the Plan.

Credit will be allowed toward private room charges in an amount equal to the facility's most prevalent charge for semiprivate accommodations. Charges will also be paid for general nursing care and other services which would ordinarily be covered in a general hospital. In order to be eligible for these benefits, admission must occur within 14 days of discharge from the hospital.

In order to qualify for benefits provided by a skilled nursing facility, the following stipulations apply:

a. The services are medically required to be given on an inpatient basis because of the covered individual's need for skilled nursing care on a continuing basis for any of the conditions for which he or she was receiving inpatient hospital services prior to transfer from a hospital to the skilled nursing facility or for a condition requiring such services which arose after such transfer and while he or she was still in the facility for treatment of the condition or conditions for which he or she was receiving inpatient hospital services,

b. Only on prior referral by and so long as, the patient remains under the active care of an attending doctor who certifies that continual hospital confinement would

be required without the care and treatment of the skilled nursing facility, and

c. Approved in advance by the Claims Processor."

Sec. 38. G.S. 135-40.6(8)e. reads as rewritten:

"e. Prosthetic and Orthopedic Appliances and Durable Medical Equipment: Appliances and equipment including corrective and supportive devices such as artificial limbs and eyes, wheelchairs, traction equipment, inhalation therapy and suction machines, hospital beds, braces, orthopedic corsets and trusses, and other prosthetic appliances or ambulatory apparatus which are provided solely for the use of the participant. Eligible charges include repair and replacement when medically necessary. Benefits will be provided on a rental or purchase basis at the sole discretion of the ~~Administrator~~ Claims Processor and agreements to rent or purchase shall be between the ~~Administrator~~ Claims Processor and the supplier of the appliance.

For the purposes of this subdivision, the term 'durable medical equipment' means standard equipment normally used in an institutional setting which can withstand repeated use, is primarily and customarily used to serve a medical purpose, is generally not useful to a person in the absence of an illness or injury and is appropriate for use in the home. Decisions of the Claims Processor, the Executive Administrator and Board of Trustees as to compliance with this definition and coverage under the Plan shall be final."

Sec. 39. G.S. 135-40.6A(a) is amended by adding a new subdivision to read:

"(8) Hospice Services in accordance with G.S. 135-40.6(8)q."

Sec. 40. G.S. 135-40.7(14) reads as rewritten:

"(14) Charges for cosmetic surgery or treatment except that charges for cosmetic surgery or treatment required for correction of damage caused by accidental injury sustained by the covered individual while ~~this insurance or its predecessor~~ coverage under this plan is in force on his or her account or to correct congenital deformities or anomalies shall not be excluded if they otherwise qualify as covered medical expenses."

Sec. 41. Effective January 1, 1992, G.S. 135-40.6(5)a. reads as rewritten:

"a. Surgery: Cutting procedures, treatment of fractures, transfusions, operative preparation for diagnostic x-ray

examinations, surgical implantation radiation sources, major endoscopic examinations, biopsies, surgical sterilization, other standard services and operations.

For the purpose of this subdivision, the term 'standard services and operations' includes the following organ transplants: liver, heart, corneal, bone marrow, lung, heart-lung, pancreas, and kidney. All other organ transplants shall be considered nonreimbursable under the Plan. Benefits for the above listed organ transplants shall be payable only in accordance with rules established by the Executive Administrator and Board of Trustees. The Executive Administrator and Board of Trustees may limit the Plan's reimbursement for selected organ transplants to amounts that would otherwise be allowed in accordance with G.S. 135-40.4."

Sec. 42. Effective January 1, 1985, G.S. 135-40.11(a) is amended by adding a new subdivision to read:

"(7) The last day of the month in which an employee who is Medicare-eligible selects Medicare to be the primary payer of medical benefits. Coverage for a Medicare-eligible spouse of an employee shall also cease the last day of the month in which Medicare is selected to be the primary payer of medical benefits for the Medicare-eligible spouse."

Sec. 43. Unless otherwise stated, this act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 324 **CHAPTER 428**

AN ACT TO REQUIRE COUNTY BOARDS OF ELECTIONS TO FILE COPIES OF CERTAIN ELECTION RETURNS WITH THE SECRETARY OF STATE IN A FORMAT PRESCRIBED BY THE SECRETARY OF STATE, SO AS TO ALLOW PUBLICATION OF THE RETURNS IN A TIMELY MANNER AND IN A READILY ACCESSIBLE FORMAT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-195 reads as rewritten:

"*§ 163-195. Secretary of State to record abstracts and general election results.*

(a) The Secretary of State shall record the State, district, and county abstracts filed with him by the State Board of Elections in a book to be kept by him for that purpose.

(b) Within seven days after the county board of elections meets to canvass the returns for the general election, the chairman of that board shall mail, or otherwise deliver, to the Secretary of State results of elections for:

President and Vice President of the United States
Governor, Lieutenant Governor, and all other State executive officers
United States Senators
Members of the House of Representatives of the United States Congress
Justices, Judges, and District Attorneys of the General Court of Justice
State Senators
Members of the State House of Representatives
Constitutional amendments and propositions submitted to the voters of the State.

The chairman shall deliver the results in a format prescribed by the Secretary of State. The chairman shall use the same format to amend the results to reflect any recounts or changes in the data that he learns of later after the initial results are sent in.

The Secretary of State shall compile the results he receives in a document and deliver copies to the State Senate and the State House of Representatives within 90 days after the general election. The Secretary of State shall amend the document to correct any inaccuracies that later counts reveal in the data, and shall provide the House and Senate with the corrected data."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 371 **CHAPTER 429**

AN ACT TO INCREASE THE FEE CHARGED BY THE SECRETARY OF STATE TO CERTIFY A DOCUMENT ON FILE IN THAT OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 147-37 reads as rewritten:

"§ *147-37. Secretary of State; fees to be collected.*

When no other charge is provided by law, the Secretary of State shall collect such fees for copying any document or record on file in his office which in his discretion bears a reasonable relation to the quantity of copies supplied and the cost of purchasing or leasing and maintaining copying equipment. These fees may be changed from time

to time, but a schedule of fees shall be available on request at all times. In addition to copying charges, the Secretary of State shall collect a fee of ~~two dollars ($2.00)~~ six dollars and twenty-five cents ($6.25) for certifying any document or record on file in his office or for issuing any certificate as to the facts shown by the records on file in his office."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 386 **CHAPTER 430**

AN ACT TO MAKE AMENDMENTS RELATING TO AERONAUTICS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 63-68 reads as rewritten:

"*§ 63-68. Limitations on State financial aid.*

Grants and loans of funds authorized by this Article shall be subject to the following conditions and limitations:

(1) Loans and grants may be for such projects, activities, or facilities as would in general be eligible for approval by the Federal Aviation Administration or its successor agency or agencies with the exception that the requirement that the airport be publicly owned shall not be applicable. Further, airport terminal and security areas, seaplane bases, and heliports are also eligible for State financial aid.

(2) Loans and grants of State funds shall be limited to a maximum of fifty percent (50%) of the nonfederal share of the total cost of any project for which aid is requested, and shall be made only for the purpose of supplementing such other funds, public or private, as may be available from federal or local sources provided, however, using one hundred percent (100%) State funding in its discretion the Department of Transportation may purchase, install and maintain navigational aids necessary for the safe, efficient use of airspace and may conduct other projects or programs to improve the safety and planning of the air transportation system, including but not limited to, ~~making~~ marking serviceable runways and taxiways. Further, the Department of Transportation may contract out the maintenance and installation of state-owned navigational aids when necessary and may give or transfer such aids to the Federal Aviation Administration.

(3) Loans and grants of State funds shall be made from General Assembly appropriations specifically designated for aviation improvement, and from no other source. The Department of Transportation may utilize the State Aviation Grant Funds to cover the direct and indirect costs of administering airport grant ~~projects~~ projects, other services authorized by this Article including planning, and the costs of services provided by nonadministrative Department of Transportation divisions or other State agencies in connection with these projects.

(4) Notwithstanding the provisions of this section or G.S. 63-67, the Department of Transportation may allow up to ten percent (10%) of State aviation grant funds to be used for maintenance on General Aviation and Air Carrier Airports having a Department of Transportation approved maintenance plan on a seventy-five percent (75%) local -- twenty-five percent (25%) State basis.

(5) Notwithstanding the provisions of this section, the Department of Transportation may allow loans and grants of State funds up to eighty percent (80%) of the nonfederal share of the total cost of the development of new or unpaved publicly owned airports identified in the North Carolina Airport System Plan, provided that such funding shall be limited to land acquisition, site preparation, basic runway, taxiway, and apron system construction, together with associated lighting and navigational aids, and construction of the primary airport access road. Electronic navigational aids, terminal buildings, access taxiways, and other items eligible for State airport aid at the rate of fifty percent (50%) of the nonfederal share of project cost shall not be eligible for the foregoing eighty percent (80%) State funding, even though constructed as part of the initial airport development.

(6) Notwithstanding the provisions of this section, the Department of Transportation may allow loans and grants of State funds up to ninety percent (90%) of the total cost of the development of new or unpaved publicly owned rural airports identified in the North Carolina Airport System Plan and receiving no federal funding. Such State funding shall be limited to land acquisition, site preparation, basic runway, taxiway, and apron system construction, together with associated lighting and navigational aids, and construction of the primary airport access road.

The Department of Transportation shall develop rules and regulations to define rural airports."

Sec. 2. G.S. 63-73 reads as rewritten:

"§ *63-73. Letting of ~~contracts for airport construction and repair~~ contracts.*

All contracts that the Department of Transportation may let for ~~construction or repair or~~ construction, repair, maintenance ~~necessary to carry out the provisions~~ or those services listed in 49 U.S.C. App. § 2210(a)(16) in furtherance of this Article shall be let in accordance with the provisions of G.S. 136-28.1."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 410 **CHAPTER 431**

AN ACT TO AMEND THE ENVIRONMENTAL POLICY ACT OF 1971 AND TO MAKE THE ACT PERMANENT.

The General Assembly of North Carolina enacts:

Section 1. Section 12 of Chapter 1203 of the 1971 Session Laws, as amended by Chapter 119 of the 1973 Session Laws, Chapter 532 of the 1977 Session Laws, and Chapter 658 of the 1981 Session Laws, is rewritten to read:

"Sec. 12. This act shall become effective on 1 October 1971."

Sec. 2. G.S. 113A-4 reads as rewritten:

"§ *113A-4. Cooperation of agencies; reports; availability of information.*

The General Assembly authorizes and directs that, to the fullest extent possible:

(1) The policies, rules, and public laws of this State shall be interpreted and administered in accordance with the policies set forth in this Article; and

(2) Any State agency shall include in every recommendation or report on proposals for legislation and actions involving expenditure of public moneys for projects and programs significantly affecting the quality of the environment of this State, a detailed statement by the responsible official setting forth the following:

a. The environmental impact of the proposed action;

b. Any significant adverse environmental effects which cannot be avoided should the proposal be implemented;

c. Mitigation measures proposed to minimize the impact;

d. Alternatives to the proposed action;

e. The relationship between the short-term uses of the environment involved in the proposed action and the

maintenance and enhancement of long-term productivity; and

f. Any irreversible and irretrievable environmental changes which would be involved in the proposed action should it be implemented.

(2a) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any agency which has either jurisdiction by law or special expertise with respect to any environmental impact involved. Any unit of local government or other interested party that may be adversely affected by the proposed action may submit written comment. The responsible official shall consider written comment from units of local government and interested parties that is received within the established comment period. Copies of such detailed statement and such comments shall be made available to the Governor, to such agency or agencies as he may designate, and to the appropriate multi-county regional agency as certified by the ~~Director of the Department~~ Secretary of Administration, shall be placed in the public file of the agency and shall accompany the proposal through the existing agency review processes. A copy of such detailed statement shall be made available to the public and to counties, municipalities, institutions and individuals, upon request.

(3) The Governor, and any State agency charged with duties under this Article, may call upon any of the public institutions of higher education of this State for assistance in developing plans and procedures under this Article and in meeting the requirements of this Article, including without limitation any of the following units of the University of North Carolina: the Water Resources Research Institute, the Institute for Environmental Studies, the Triangle Universities Consortium on Air Pollution, ~~the University Council on Marine Sciences,~~ and the Institute of Government."

Sec. 3. G.S. 113A-8 reads as rewritten:

"§ *113A-8. Major development projects.*

(a) The governing bodies of all cities, counties, and towns acting individually, or collectively, ~~are hereby authorized to~~ may by ordinance require any special-purpose unit of government ~~and~~ or private developer of a major development project to submit detailed statements, as defined in G.S. 113A-4(2), of the impact of such ~~projects.~~ projects for consideration by those governing bodies in

matters within their jurisdiction. Any such ordinance may not be designed to apply to only a particular major development project, and shall be applied consistently.

(b) Any ordinance adopted pursuant to this section shall exempt those major development projects for which a detailed statement of the environmental impact of the project or a functionally equivalent permitting process is required by federal or State law, regulation, or rule.

(c) Any ordinance adopted pursuant to this section shall establish minimum criteria to be used in determining whether a statement of environmental impact is required. A detailed statement of environmental impact may not be required for a project that does not exceed the minimum criteria and any exceptions to the minimum criteria established by the ordinance."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 520 **CHAPTER 432**

AN ACT TO LIMIT THE LIABILITY OF PERSONS RESPONDING TO OIL SPILLS.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.93A. Limitation on liability of persons engaged in removal of oil discharges.*

(a) Except as provided in subsection (b) of this section, a person is not liable under this Part, Part 2C of this Article, Articles 21 and 21B of this Chapter, other provisions of the General Statutes relating to protection of the environment or public health, Chapter 1B of the General Statutes, or common law causes of action in tort for removal costs or damages which result from, arise out of, or are related to the discharge or threatened discharge of oil, when such removal costs or damages result from acts or omissions in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the President of the United States, the Federal On-Scene Coordinator, the Governor, the Secretary, the Secretary of Crime Control and Public Safety, or any person designated to direct oil discharge removal activities by the President of the United States, the Governor, the Secretary, or the Secretary of Crime Control and Public Safety.

(b) The limitation on liability under subsection (a) of this section does not apply:

(1) To a responsible party;

(2) To a response under CERCLA/SARA or under Part 4 of Article 9 of Chapter 130A of the General Statutes;

(3) To a response under Part 3 of Article 9 of Chapter 130A of the General Statutes;

(4) To a cleanup under Part 2A of this Article;

(5) With respect to personal injury or wrongful death; or

(6) If the person is grossly negligent or engages in willful misconduct.

(c) A responsible party is liable for any removal costs and damages that another person is relieved of under this section.

(d) Nothing in this section affects the obligation of an owner or operator to respond immediately to a discharge, or the threat of a discharge, of oil.

(e) As used in this section:

(1) 'CERCLA/SARA' means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 § U.S.C. 9601 **et seq.**, as amended, and the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499, 100 Stat. 1613, as amended.

(2) 'Damages' has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701, and in G.S. 143-215.94BB.

(3) 'Federal On-Scene Coordinator' means a person designated as such in the National Contingency Plan.

(4) 'National Contingency Plan' has the same meaning as in 33 U.S.C. § 1321, as amended.

(5) 'Oil Pollution Act of 1990' means the Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484, which appears generally as 33 U.S.C. § 2701 *et seq.*, as amended.

(6) 'Remove' or 'removal' has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701.

(7) 'Removal costs' has the same meaning as in the Oil Pollution Act of 1990, 33 U.S.C. § 2701.

(8) 'Responsible party' means a person who is a 'responsible party' as defined in the Oil Pollution Act of 1990, 33 U.S.C. § 2701, and who is liable for removal costs or damages which result from, arise out of, or are related to the discharge or threatened discharge of oil."

Sec. 2. This act becomes effective 1 October 1991 and applies to discharges or threatened discharges occurring on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 563 **CHAPTER 433**

AN ACT TO AUTHORIZE THE NORTH CAROLINA HUMAN RELATIONS COMMISSION TO BRING AN ACTION FOR AN INTERFERENCE OF CIVIL RIGHTS UNDER CHAPTER 99D OF THE GENERAL STATUTES AND TO MAKE OTHER CHANGES TO CHAPTER 99D.

The General Assembly of North Carolina enacts:

Section 1. G.S. 99D-1 is amended by adding a new subsection to read:

"(b1) The North Carolina Human Relations Commission may bring a civil action on behalf, and with the consent, of any person subjected to a violation of this Chapter. In any such action, the court may restrain and enjoin such future acts, and may award compensatory damages and punitive damages to the person on whose behalf the action was brought. Court costs may be awarded to the Commission or the defendant, whichever prevails. Notwithstanding the provisions of G.S. 114-2, the commission shall be represented by the Commission's staff attorney."

Sec. 2. G.S. 99D-1(b) reads as rewritten:

"(b) Any person whose exercise or enjoyment of a right described in subdivision (a)(1) has been interfered with, or against whom an attempt has been made to interfere with the exercise or enjoyment of such a right, by a violation of this Chapter may bring a civil action. ~~The court may award to a prevailing party compensatory damages, punitive damages, court costs, and reasonable attorneys' fees. The court may also restrain and enjoin such future acts by any party.~~ The court may restrain and enjoin such future acts, and may award compensatory and punitive damages to the plaintiff. The court may award court costs and attorneys' fees to the prevailing party. However, a prevailing defendant may be awarded reasonable attorneys' fees only upon a showing that the case is frivolous, unreasonable, or without foundation."

Sec. 3. G.S. 143B-391 reads as rewritten:

"*§ 143B-391. North Carolina Human Relations Commission -- creation; powers and duties.*

There is hereby created the North Carolina Human Relations Commission of the Department of Administration. The North Carolina Human Relations Commission shall have the following functions and duties:

(1) To study problems concerning human relations;
(2) To promote equality of opportunity for all citizens;
(3) To promote understanding, respect, and goodwill among all citizens;
(4) To provide channels of communication among the races;
(5) To encourage the employment of qualified people without regard to race;
(6) To encourage youths to become better trained and qualified for employment;
(7) To receive on behalf of the Department of Administration and to recommend expenditure of gifts and grants from public and private donors;
(8) To enlist the cooperation and assistance of all State and local government officials in the attainment of the objectives of the Commission;
(9) To assist local good neighborhood councils and biracial human relations committees in promoting activities related to the functions of the Commission enumerated above;
(10) To advise the Secretary of Administration upon any matter the Secretary may refer to it; ~~and~~
(11) To administer the provisions of the State Fair Housing Act as outlined in Chapter 41A of the General ~~Statutes.~~ Statutes;
(12) To administer the provisions of Chapter 99D of the General Statutes."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 605 **CHAPTER 434**

AN ACT TO CLARIFY PROCEDURAL REQUIREMENTS FOR DISPOSITIONS COMMITTING JUVENILES TO THE DIVISION OF YOUTH SERVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-651 is amended by adding a new subsection to read:

"(e) An order that commits a juvenile to the Division of Youth Services shall recite detailed findings that support commitment to the Division as the least restrictive alternative in light of the circumstances. These findings shall state that all alternatives to commitment prescribed in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or were considered and found to be

inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Sec. 2. G.S. 7A-652(e) reads as rewritten:

"(e) The Division of Youth Services shall accept all juveniles who have been committed for delinquency when the order of commitment appears on its face to contain the findings required by G.S. 7A-651(e) but may decline to do so otherwise. ~~if the Director finds that the criteria specified in this section have been met.~~ A commitment order accompanied by information requested by the Director shall be forwarded to the Division. The Director shall place the juvenile in the residential facility that would best provide for his needs and shall notify the committing court. The Secretary of the Department of Human Resources may assign a juvenile committed for delinquency to any institution or other program of the Department or licensed by the Department, which program is appropriate to the needs of the juvenile."

Sec. 3. G.S. 7A-652(a) reads as rewritten:

"(a) A delinquent juvenile 10 years of age or more may be committed to the Division of Youth Services for placement in one of the residential facilities operated by the Division if the judge finds that the alternatives to commitment as contained in G.S. 7A-647, 7A-648, and 7A-649 have been attempted unsuccessfully or ~~are~~ were considered and found to be inappropriate and that the juvenile's behavior constitutes a threat to persons or property in the community. These findings shall be supported by substantial evidence in the record that the judge determined the needs of the juvenile, determined the appropriate community resources required to meet those needs, and explored and exhausted or considered inappropriate those resources prior to committing the juvenile to the Division."

Sec. 4. This act becomes effective October 1, 1991, and applies to commitments ordered on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 659 **CHAPTER 435**

AN ACT TO REGULATE HUNTING ON, FROM, OR ACROSS THE RIGHT-OF-WAY OF PUBLIC ROADS OR HIGHWAYS IN ONSLOW COUNTY AND TO CHANGE THE LAW

REGARDING TRESPASSING ON POSTED LAND IN ONSLOW COUNTY.

The General Assembly of North Carolina enacts:

Section 1. It is unlawful to hunt, take, or kill a wild animal or wild bird from or on the right-of-way of any public road or highway, or to discharge a firearm from or on the right-of-way of a public road or highway while in pursuit of game, without first securing the written permission of the owner or lessee of the land which abuts the public road or highway. Even if written permission is secured in compliance with this section, any vehicle which is being used to hunt or to discharge a weapon must be completely off the traveled surface of a paved road or highway, and it is unlawful under any circumstances to hunt, take, or kill a wild animal or wild bird or to discharge a firearm from, on, or across the traveled surface of a public road or highway.

Sec. 2. Violation of Section 1 of this act is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500.00) or by imprisonment not to exceed 30 days, or both.

Sec. 3. Section 1 of this act is enforceable by law enforcement officers of the Wildlife Resources Commission, by sheriffs and deputy sheriffs, and by peace officers with general subject matter jurisdiction.

Sec. 4. G.S. 14-159.6 reads as rewritten:

"*§ 14-159.6. Trespass for purposes of hunting, etc., without written consent a misdemeanor.*

Any person who willfully goes on the land, waters, ponds, or a legally established waterfowl blind of another upon which notices, signs or posters, described in G.S. 14-159.7, prohibiting hunting, fishing or trapping, or upon which 'posted' notices have been placed, to hunt, fish or trap without the written consent of the owner or his agent shall be guilty of a misdemeanor and punished by a fine of not less than fifty dollars ($50.00) nor more than two hundred fifty dollars ($250.00), or by imprisonment for not more than six months, or by both fine and imprisonment. Provided, further, that no arrests under authority of this section shall be made without the consent of the owner or owners of said land, or their duly authorized agents in the following counties: ~~Halifax, Onslow,~~ Halifax and Warren."

Sec. 5. This act applies only to Onslow County.

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 923 **CHAPTER 436**

AN ACT TO CLARIFY THE PROCEDURES GOVERNING THE NOMINATION AND ELECTION OF MEMBERS OF THE BOARD OF GOVERNORS OF THE UNIVERSITY OF NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 116-6 reads as rewritten:

"§ *116-6. Election and terms of members of Board of Governors.*

(a) As the terms of members of the Board of Governors provided for in G.S. 116-5 expire, their successors shall be elected by the Senate and House of Representatives. ~~Eight members shall be so elected at the regular legislative session in 1987 and 1989, and 16~~ Sixteen members shall be ~~so~~ elected at the regular legislative session in ~~1991~~ 1993 and every two years thereafter. The Senate and the House of Representatives shall each elect one-half of the persons necessary to fill the vacancies on the Board of Governors. Of the 16 members elected every two years beginning in 1993, at least two shall be women, at least two other members shall be members of a minority race, and at least two other members shall be members of the political party to which the largest minority of the members of the General Assembly belongs.

(b) In 1993 and every four years thereafter the Senate shall elect at least two women and two members of a minority race, and the House of Representatives shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belongs. In 1995 and every four years thereafter the Senate shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belongs, and the House of Representatives shall elect at least two women and two members of a minority race.

(c) In electing members to the Board of Governors, the Senate and the House of Representatives shall select from a slate of candidates made in each house. The slate shall be prepared as provided by resolution of each house. If a sufficient number of nominees who are legally qualified are submitted in a category for which members of the Board of Governors are to be elected, then the slate of candidates shall list at least twice the number of candidates for the total seats open in a category. All qualified candidates in a category shall compete against all other qualified candidates in a category. In 1993 and biennially thereafter, each house shall hold their elections within 30 legislative days after appointments to their education committees are complete.

~~(b)~~ (d) All terms shall commence on July 1 of odd-numbered years and all members shall ~~serve for eight-year overlapping terms, except that beginning with members elected in 1987, all members shall~~ serve for four-year overlapping terms.

~~(c)~~ (e) ~~Beginning with elections in 1989, no~~ No person may be elected to:

(1) More than three full four-year terms in succession;

(2) A four-year term if preceded immediately by election to two full eight-year terms in succession; or

(3) A four-year term if preceded immediately by election to an eight-year term and a ~~four-year term~~ four-year term in succession.

Resignation from a term of office does not constitute a break in service for the purpose of this subsection. Service prior to the beginning of those terms in 1989 shall be included in the limitations.

~~(d) The Senate and House of Representatives, in electing members of the Board of Governors, shall select from a slate of nominees made in each house as provided by resolution of that house. In the event there is more than one individual who is seeking a nomination to the Board of Governors, the slate of nominees shall contain at least two nominees for any vacancy. The Senate and the House of Representatives shall elect one half of the persons necessary to fill the vacancies, with the Senate to hold its election prior to the House of Representatives. In the event that an odd number of members are to be elected, the House of Representatives shall select the additional nominee. In 1973 and every four years thereafter through 1989, the Senate shall elect at least one woman and one member of a minority race and the House of Representatives shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong. In 1975 and every four years thereafter through 1987, the Senate shall elect at least one member of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least one woman and one member of a minority race. In 1991 and every four years thereafter the Senate shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belong and the House of Representatives shall elect at least two women and two members of a minority race. In 1993 and every four years thereafter the Senate shall elect at least two women and two members of a minority race and the House of Representatives shall elect at least two members of the political party to which the largest minority of the members of the General Assembly belong. In 1989 and biennially thereafter, these elections shall be held during the first 30 legislative days after committee assignments.~~

~~(e) Of the eight members elected every two years through 1989, at least one shall be a woman, at least one other member shall be a member of a minority race, and at least one other member shall be a member of the political party to which the largest minority of the members of the General Assembly belong. Of the 16 members elected every two years beginning in 1991, at least two shall be women, at least two other members shall be members of a minority race, and at least two other members shall be members of the political party to which the largest minority of the members of the General Assembly belong. In subsequent elections to the Board, the General Assembly shall maintain at least these minimum proportions among the members of the Board.~~

(f) ~~Effective July 1, 1987, and thereafter, any~~ Any person ~~who has not attained the age of 70 years, and~~ who has served at least one full term as chairman of the Board of Governors shall be a member emeritus of the Board of ~~Governors.~~ Governors for one four-year term beginning at the expiration of that member's regular elected term. Any person already serving as an emeritus member may serve an additional four-year term beginning July 1, 1991. Members emeriti have all the rights and privileges of membership except they do not have a vote."

Sec. 2. G.S. 116-7(c) reads as rewritten:

"(c) Whenever any vacancy shall occur in the elected membership of the Board of Governors, it shall be the duty of the Board to inform the Speaker of the House of Representatives and the President of the Senate of the ~~vacancy.~~ vacancy. The chamber that originally elected the vacating member shall elect a person to fill the vacancy. ~~and the~~ The vacancy shall remain unfilled until the appropriate chamber of the General Assembly elects a person to fill the vacancy.

The ~~General Assembly shall fill the~~ vacancy shall be filled not later than the adjournment sine die of the next regular session of the General Assembly. The election shall be for the remainder of the unexpired term. Whenever a member shall fail, for any reason other than ill health or service in the interest of the State or nation, to be present for four successive regular meetings of the Board, his place as a member shall be deemed vacant."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

H.B. 1304 **CHAPTER 437**

AN ACT TO MODIFY THE PRISON POPULATION CAP.

The General Assembly of North Carolina enacts:

Section 1. Effective June 30, 1991, G.S. 148-4.1(d), as amended by Section 11 of Chapter 933 of the 1989 Session Laws, reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~20,435~~ 19,646 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~20,435.~~ 19,646.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~20,435,~~ 19,646, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 2. Effective July 1, 1991, G.S. 148-4.1(e), as amended by Section 12 of Chapter 933 of the 1989 Session Laws, reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~20,435,~~ 19,646, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 3. Effective July 1, 1991, G.S. 148-4.1(f), as amended by Section 13 of Chapter 933 of the 1989 Session Laws, reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~20,435.~~ 19,646."

Sec. 4. Effective February 1, 1992, G.S. 148-4.1(d), as rewritten by Section 1 of this act, reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~19,646~~ 20,394 for 15 consecutive days, the Secretary of Correction shall notify the Governor

and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~19,646.~~ 20,394.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~19,646,~~ 20,394, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 5. Effective February 1, 1992, G.S. 148-4.1(e), as rewritten by Section 2 of this act, reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~19,646,~~ 20,394, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 6. Effective February 1, 1992, G.S. 148-4.1(f), as rewritten by Section 3 of this act, reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~19,646.~~ 20,394."

Sec. 7. Effective May 1, 1992, G.S. 148-4.1(d), as rewritten by Section 4 of this act, reads as rewritten:

"(d) If the number of prisoners housed in facilities owned or operated by the State of North Carolina for the Division of Prisons exceeds ninety-eight percent (98%) of ~~20,394~~ 20,594 for 15 consecutive days, the Secretary of Correction shall notify the Governor and the Chairman of the Parole Commission of this fact. Upon receipt of this notification, the Parole Commission shall within 90 days release on parole a number of inmates sufficient to reduce the prison population to ninety-seven percent (97%) of ~~20,394.~~ 20,594.

From the date of the notification until the prison population has been reduced to ninety-seven percent (97%) of ~~20,394,~~ 20,594, the Secretary may not accept any inmates ordered transferred from local confinement facilities to the State prison system under G.S. 148-32.1(b). Further, the Secretary may return any inmate housed in the State prison system under an order entered pursuant to G.S. 148-

32.1(b) to the local confinement facility from which the inmate was transferred."

Sec. 8. Effective May 1, 1992, G.S. 148-4.1(e), as rewritten by Section 5 of this act, reads as rewritten:

"(e) In addition to those persons otherwise eligible for parole, from the date of notification in subsection (d) until the prison population has been reduced to ninety-seven percent (97%) of ~~20,394,~~ 20,594, any person imprisoned only for a misdemeanor also shall be eligible for parole and immediate termination upon admission, notwithstanding any other provision of law, except those persons convicted under G.S. 20-138.1 of driving while impaired or any offense involving impaired driving."

Sec. 9. Effective May 1, 1992, G.S. 148-4.1(f), as rewritten by Section 6 of this act, reads as rewritten:

"(f) In complying with the mandate of subsection (d), the Parole Commission may exercise the discretion granted to refuse parole by G.S. 15A-1371 in selecting felons to be paroled under this section so long as the prison population does not exceed ~~20,394.~~ 20,594."

Sec. 10. The Secretary of Correction may advance or delay the effective dates of Sections 1 through 9 of this act by not more than 45 days from the dates provided in this act, based on the availability or lack of prison space.

Sec. 11. The Secretary of Correction shall report on the progress of prison construction and on prison capacity in the 1991-93 biennium to the Chairmen of the Senate and House Appropriations Committees and the Chairmen of the Senate and House Appropriations Committees on Justice and Public Safety during the 1992 Regular Session of the 1991 General Assembly.

Sec. 12. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 27th day of June, 1991.

S.B. 590 **CHAPTER 438**

AN ACT TO AMEND THE CHARTER OF THE CITY OF HENDERSONVILLE RELATING TO ASSESSMENTS.

The General Assembly of North Carolina enacts:

Section 1. Section 12.1 of the Charter of the City of Hendersonville being Chapter 874 of the 1971 Session Laws is rewritten to read:

"Sec. 12.1. Sidewalks; Assessment of Costs. (a) In addition to any authority which is now or may hereafter be granted by law to the City for making sidewalk improvements, the Council may make, or

order to be made, sidewalk improvements or repairs, according to standards and specifications of the City, and to assess the total cost thereof against abutting property owners according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, without the necessity of a petition upon the following findings of fact:

(1) That the sidewalk, or part thereof, is unsafe for vehicular traffic and it is in the best interest to make such improvement;

(2) That it is in the public interest to continue, add to, or otherwise extend or expand portions of sidewalks already improved; or

(3) That it is in the public interest to widen a sidewalk, or part thereof, that is already improved.

(b) If a sidewalk is constructed on only one side of a street in a residential zone, the cost thereof may be assessed against a property abutting on both sides of the street, unless there already exists a sidewalk on the other side of the street, the total costs of which has been assessed against the abutting property.

(c) In ordering sidewalk improvements without a petition and assessing the cost thereof under authority of this section, the Council shall comply with the procedure provided in Article 10 of Chapter 160A of the General Statutes, except those provisions relating to the petition of property owners and the sufficiency thereof. The effect of the act of levying assessments under the authority of this section is the same for all purposes as if the assessments were levied under the authority of Article 10 of Chapter 160A of the General Statutes.

(d) For purposes of this section, the term 'sidewalk improvement' includes grading, regrading, surfacing, resurfacing, widening, paving, repaving, the acquisition of right-of-way, and the construction or reconstruction of curb, gutters, and street drainage facilities."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.B. 697 **CHAPTER 439**

AN ACT TO ALLOW AN ADDITIONAL 180-DAY PERIOD FOR DEPLOYED ARMED FORCES PERSONNEL AND SUPPORT PERSONNEL TO FILE STATE TAX RETURNS AND TO CONFORM THE STATE INCOME TAX ABATEMENT PROVISIONS CONCERNING MILITARY PERSONNEL TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-249.2 reads as rewritten:

"*§ 105-249.2. ~~State~~ Due date and penalties for State taxes owed by certain members of the armed ~~forces; no interest or penalty to accrue while in combat zone.~~ forces or individuals serving in support of the armed forces.*

~~Whenever any tax imposed by the State under the provisions of this Chapter is owed by any member of the armed forces of the United States who is serving in a combat zone, as the same is hereinafter defined, or who is hospitalized as a result of wounds, disease or injury incurred by serving in a combat zone during a period of induction, there shall be no interest or penalty assessed for taxes due during the period in which such member of the armed forces is in such combat zone, or is hospitalized as a result of wounds, disease or injury incurred while serving in such combat zone.~~

~~Combat zone is hereby defined as an area which the President of the United States by executive order has designated as an area in which the armed forces of the United States are, or have been, engaged in combat. The provisions of this section shall apply to any month or months during any part of which such member of the armed services served in a combat zone during an induction period; except that this section shall not apply for any month during any part of which there was no combat activities in the combat zone.~~ The Secretary may not assess interest or a penalty against a taxpayer for any period that is disregarded under section 7508 of the Code, as amended by Pub. L. No. 102-2, in determining the taxpayer's liability for a federal tax. A taxpayer is granted an extension of time to file a return or take another action concerning a State tax for any period during which the Secretary may not assess interest or a penalty under this section."

Sec. 2. G.S. 105-158 reads as rewritten:

"*§ 105-158. ~~Abatement of income taxes of certain members of the armed forces upon death.~~ Taxation of certain armed forces personnel and other individuals upon death.*

~~In the case of any individual~~

~~(1) Who dies~~

~~a. On or after January 1, 1964,~~

~~b. While in active service as a member of the armed forces of the United States, and~~

~~c. While serving in a combat zone; or~~

~~(2) Who dies~~

~~a. On or after January 1, 1964, and~~

~~b. As a result of wounds, disease, or injury incurred while in active service as a member of the armed forces of the~~

~~United States, and while serving in a combat zone on or after January 1, 1964.~~

~~No individual income tax imposed by this Division shall apply with respect to the taxable year in which falls the date of the individual's death, or with respect to any prior taxable year ending on or after the first day the individual so served in a combat zone; and any tax under this Division and under the corresponding provisions of prior revenue laws for taxable years preceding those above specified which is unpaid at the date of the individual's death (including interest, additions to the tax, and additional amounts) shall not be assessed and if assessed the assessment shall be abated, and if collected shall be credited or refunded as an overpayment. As used in this section, the term "combat zone" means an area which the President of the United States by executive order designates as an area in which the armed forces of the United States are or have been engaged in combat.~~

An individual is not subject to the tax imposed by this Division for a taxable year if, under section 692 of the Code, the individual is not subject to federal income tax for that same taxable year."

Sec. 3. This act is effective upon ratification and applies retroactively as of August 2, 1990.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.B. 706 **CHAPTER 440**

AN ACT TO PROVIDE FOR THE ENFORCEMENT OF CERTAIN NORTH CAROLINA LAWS REGARDING CORPORATE ACQUISITIONS.

The General Assembly of North Carolina enacts:

Section 1. The General Statutes of North Carolina are amended by adding a new Chapter to read:

"Chapter 75E.

"Unlawful Activities in Connection With Certain Corporate Transactions.

"§ *75E-1. Definitions.*

The following words and phrases as used in this Chapter shall have the following meanings unless the context clearly requires otherwise:

(1) 'Acquiring person statement' has the same meaning as G.S. 55-9A-02.

(2) 'Business combination' has the same meaning as G.S. 55-9-01(b)(1).

(3) 'Control share acquisition' has the same meaning as G.S. 55-9A-01(b)(3).

(4) 'Person' includes 'entity' (as that term is defined in G.S. 55-1-40(9), 'individual' (as that term is defined in G.S. 55-1-40(13)) and, without limiting the generality of the foregoing, 'other entity' (as that term is defined in G.S. 55-9-01(b)(6)).

"§ 75E-2. *Unlawful activities in connection with business combinations and control share acquisitions.*

It shall be unlawful for any person:

(1) To consummate any business combination in violation of Article 9 of Chapter 55 of the General Statutes.

(2) To make a control share acquisition without complying with the provisions of Article 9A of Chapter 55 of the General Statutes.

(3) To make any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading, or to engage in any fraudulent, deceptive, or manipulative acts or practices, in connection with: (i) the application of Article 9 of Chapter 55 of the General Statutes to any business combination or to the acquisition of beneficial ownership, directly or indirectly, of more than twenty percent (20%) of the voting shares of a corporation within the meaning of Article 9; or (ii) the application of Article 9A of Chapter 55 of the General Statutes to any control share acquisition.

(4) To willfully and knowingly aid or abet any other person to engage in conduct which is prohibited by this Chapter.

"§ 75E-3. *Investigative and regulatory powers of the Attorney General.*

The Attorney General may conduct such investigations as the Attorney General deems necessary to determine compliance by all persons or entities with the provisions of Articles 9 and 9A of Chapter 55 of the General Statutes. In performing any such investigations, the Attorney General shall have all the powers given him by G.S. 75-10. The provisions of G.S. 75-11 and G.S. 75-12 shall apply to this Chapter.

"§ 75E-4. *Enforcement.*

The Attorney General may institute a civil action to prevent or restrain violations of G.S. 75E-2.

A person injured by a violation of G.S. 75E-2 may maintain an action for damages or for an injunction or both against any person who has committed the violation. The holders of the voting shares of a corporation that is the subject of a proposed business combination that is to be consummated in violation of G.S. 75E-2 shall, for purposes of the previous sentence, be deemed to be injured by such

violation, notwithstanding the fact that such business combination has not been consummated.

In a proceeding under this section, the court shall determine whether a violation has been committed and enter any judgment or decree necessary to remove the effects of any violation it finds and to prevent continuation or renewal of the violation in the future.

If an application for an injunction is granted, after due notice to all parties, and a hearing thereon, the complainant (including, without limiting the generality hereof, the Attorney General) may be awarded costs and reasonable attorneys' fees.

In an action for damages, if the defendant is found to have willfully violated G.S. 75E-2, the person injured may be awarded up to three times the amount of actual damages which result from the violation, with costs and reasonable attorneys' fees.

"§ *75E-5. Civil penalties.*

In any suit instituted by the Attorney General in which the defendant is found to have violated G.S. 75E-2, the court may, in its discretion, impose a civil penalty against the defendant of not more than one hundred thousand dollars ($100,000) for each violation; provided that, if the court shall determine that such violation was willful, it may in its discretion treble such penalty; provided, further, that in either of the foregoing circumstances, the court may in its discretion award to the Attorney General costs and reasonable attorneys' fees. Any penalty assessed pursuant to this section shall be paid to the General Fund of the State of North Carolina.

"§ *75E-6. Remedies cumulative.*

The remedies provided in this Chapter are cumulative.

"§ *75E-7. Chapter not exclusive.*

This Chapter shall not be deemed to supersede, restrict, or otherwise limit any other applicable laws of this State.

"§ *75E-8. Designation of Secretary of State for service.*

Every nonresident person who is or is about to become the beneficial owner, directly or indirectly, of more than twenty percent (20%) of the voting shares of a corporation within the meaning of Article 9 of Chapter 55 or to make a control share acquisition, except a foreign corporation which has appointed and keeps a resident agent in this State, shall be deemed to have appointed the Secretary of State as its agent upon whom may be served any lawful process, authorized by this Chapter with the same effect as though served upon the person personally.

Service of process pursuant to this section shall be accomplished by leaving a copy of the process in the office of the Secretary of State, but it shall not be effective unless notice of the service and a copy of

the process is sent by certified or registered mail to the nonresident person served, at such person's last known address.

"§ 75E-9. *Validity; saving clause.*

In the event any provision or application of this Chapter shall be held illegal or invalid for any reason, such holding shall not affect the legality or validity of any other provision or application thereof."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 46 **CHAPTER 441**

AN ACT TO REQUIRE SALES OF BOTH HIGHWAY AND NONHIGHWAY SPECIAL FUEL TO BE REPORTED, TO ELIMINATE THE REQUIREMENT THAT CERTAIN USERS OF SPECIAL FUEL FILE REPORTS SPECIFYING THEIR USE OF SPECIAL FUEL, TO CHANGE THE MAXIMUM BOND REQUIRED OF FUEL DISTRIBUTORS AND SUPPLIERS, AND TO CHANGE THE METHOD FOR DETERMINING THE AMOUNT OF A BOND PAYABLE BY CERTAIN FUEL IMPORTERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-430 reads as rewritten:

"§ *105-430. ~~Definitions; "motor fuel," "distributor".~~ Definitions.*

The following ~~words, terms, and phrases hereinafter used for the purpose of this Article are defined as follows:~~ definitions apply in this Article:

(1) Distributor. -- A person who possesses motor fuel in this State for sale, use, or other distribution in this State or another state.

(2) Export. -- To obtain motor fuel in this State for sale or other distribution in another state.

(3) Import. -- To do either of the following:

a. Bring motor fuel into this State by pipeline, marine vessel, railroad tank car, or transport truck.

b. Exchange motor fuel located at a pipeline terminal or a seaport terminal in this State for motor fuel located inside or outside the State.

~~(1)~~(4) ~~"Motor fuel" shall mean~~ Motor fuel. -- Any of the following:

~~(i) all~~ a. All products commonly or commercially known or sold as gasoline (including casinghead and absorption

or natural gasoline) regardless of their classification or ~~uses; and (ii) any~~ uses.

b. Any liquid prepared, advertised, offered for sale or sold for use as or commonly and commercially used as a fuel in internal combustion engines, which when subjected to distillation in accordance with the standard method of test for distillation of gasoline, naphtha, kerosene and similar petroleum products (American Society for Testing Materials Designation D-86) shows not less than ten per centum (10%) distilled (recovered) below three hundred forty-seven degrees (347°) Fahrenheit (one hundred seventy-five degrees (175°) Centigrade) and not less than ninety-five per centum (95%) distilled (recovered) below four hundred sixty-four degrees (464°) Fahrenheit (two hundred forty degrees (240°) Centigrade); with the exception that the term 'motor fuel' shall not include commercial solvents which distill, by American Society for Testing Materials Method D-86, not more than nine per centum (9%) at 176° F. and which have a distillation range of 125° F. or less, of liquefied gases which would not exist as liquids at a temperature of 60° Fahrenheit and a pressure of 14.7 pounds per square inch absolute.

~~(2) "Distributor" is any person, firm, association of persons, corporation, municipality, county, or other political subdivision or agency that has on hand or in his or its possession in this State, or that produces, refines, manufactures, or compounds such motor fuels in this State for sale, distribution, or use herein.~~"

Sec. 2. G.S. 105-433, as amended by Section 1 of Chapter 42 of the 1991 Session Laws, reads as rewritten:

"*§ 105-433. Application for license as distributor; bond or letter of credit required.*

(a) Application. -- Every distributor shall obtain a license from the Secretary of Revenue. To obtain a license, an applicant must file an application with the Secretary of Revenue on a form provided by the Secretary and file with the Secretary a bond or an irrevocable letter of credit. An application shall include the applicant's name and address and any other information required by the Secretary of Revenue. If the applicant is a corporation, the applicant must either be incorporated in this State or be authorized to transact business in this State. If the applicant is a limited partnership, the applicant must either be formed in this State or be authorized to transact business in this State. If the applicant is an individual or a general partnership,

the applicant must designate an agent for service of process and give the agent's name and address.

(b) Bond. -- Each applicant for a distributor's license must file with the Secretary of Revenue a bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of credit ~~may not exceed~~ shall be two times the following, subject to the maximum and minimum amounts set in this subsection:

(1) For an applicant who intends to import motor fuel, the average monthly amount of tax for which the applicant would be liable under this Article, if the applicant's sale of imported motor fuel to a distributor were subject to the tax imposed by this Article, plus the applicant's average expected monthly tax liability under this Article.

(2) For an applicant who does not intend to import fuel, the applicant's average expected monthly tax liability under this ~~Article, as determined by the Secretary,~~ Article.

The Secretary shall determine the average monthly amount of tax for which an applicant who imports fuel would be subject and the average expected monthly tax liability of an applicant. The amount of a bond or an irrevocable letter of credit may not exceed one hundred twenty-five thousand dollars ($125,000) and may not be less than two thousand dollars ($2,000).

An applicant who is also required to file a bond or an irrevocable letter of credit under G.S. 105-449.5 as a supplier of special fuel may file a single bond or irrevocable letter of credit under either this section or G.S. 105-449.5 for the combined amount. A bond filed under this section shall be conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter, shall be payable to the State, and shall be in the form required by the Secretary of Revenue.

After filing a bond or an irrevocable letter of credit with an application for a distributor's license, a distributor shall, within 30 days after receiving a notice from the Secretary of Revenue, file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the distributor, however, may not exceed the limits set in this ~~section.~~ subsection.

(c) Issuance. -- The Secretary of Revenue shall issue a distributor's license to an applicant who meets the requirements of this section and shall issue a duplicate copy of the license for each place of business of the distributor. A distributor shall display a license issued under this section in a conspicuous place at each place of business of

the distributor. A distributor's license is not transferable and remains in effect until surrendered or cancelled.

(d) Export Exception. -- A distributor whose sale or other distribution of fuel consists only of exporting fuel is not required to be incorporated or formed in this State, authorized to transact business in this State, or have a designated agent for service of process in this State."

Sec. 3. G.S. 105-449.5, as amended by Section 7 of Chapter 42 of the 1991 Session Laws, reads as rewritten:

"§ *105-449.5. Supplier of fuel for highway use to file bond.*

The Secretary may not issue a supplier's license to an applicant who intends to sell or deliver fuel for use in a motor vehicle or to use fuel in a motor vehicle until the applicant has filed with the Secretary a bond or an irrevocable letter of credit. The amount of the bond or irrevocable letter of credit ~~may not exceed~~ shall be two times the applicant's average expected monthly tax liability under this Article, as determined by the ~~Secretary.~~ Secretary. The amount, however, may not exceed one hundred twenty-five thousand dollars ($125,000) and may not be less than five hundred dollars ($500.00). An applicant who is also required to file a bond or an irrevocable letter of credit under G.S. 105-433 as a distributor of motor fuels may file a single bond or irrevocable letter of credit under either this section or G.S. 105-433 for the combined amount. A bond filed under this section shall be conditioned upon compliance with the requirements of Article 36 and Article 36A of this Subchapter, shall be payable to the Secretary, and shall be in the form required by the Secretary.

After filing a bond or an irrevocable letter of credit with an application for a supplier's license, a supplier shall, within 30 days after receiving a notice from the Secretary, file an additional bond or irrevocable letter of credit in the amount requested by the Secretary. The amount of the initial bond or irrevocable letter of credit and any additional bond or irrevocable letter of credit filed by the supplier, however, may not exceed the limits set in this section."

Sec. 4. G.S. 105-449.2, as amended by Section 5 of Chapter 42 of the 1991 Session Laws, reads as rewritten:

"§ *105-449.2. Definitions.*

The following definitions apply in this Article:

(1) Bulk user. -- A person who maintains storage facilities for fuel and uses part or all of the stored fuel to propel a motor vehicle.

(2) Diesel. -- A liquid suitable for use as fuel in a diesel-powered motor vehicle.

~~(1)~~(3) Fuel. -- A combustible gas or liquid that can be used to generate power to propel a motor vehicle and that is not subject to tax under Article 36 of this Chapter.

~~(2)~~(4) Highway. -- Defined in G.S. 20-4.01(13).

~~(3)~~(5) Liquid. -- A substance that is liquid at a temperature above 60 degrees F. and a pressure greater than 14.7 pounds per square inch absolute.

~~(4)~~(6) Motor vehicle. -- A self-propelled vehicle that is designed for use on a highway.

~~(5)~~(7) Person. -- An individual, a firm, a partnership, an association, a corporation, or any other organization or group acting as a unit.

(8) Reseller. -- Either of the following:

a. A person who maintains storage facilities for diesel and who sells the diesel at retail or dispenses the diesel at a retail location.

b. A person who maintains storage facilities for fuel, other than diesel, and who sells the fuel at retail or dispenses the fuel at retail location into the supply tank of, or attached to, a motor vehicle.

~~(6)~~(9) Secretary. -- The Secretary of Revenue.

~~(7)~~(10) Supplier. -- A person who does one or more of the following:

a. Acquires fuel for sale or delivery to a user-seller.

b. Maintains an inventory of fuel, part or all of which the person uses ~~in a motor vehicle~~ or sells to someone other than a ~~user-seller for use in a motor vehicle.~~ user-seller.

c. Imports fuel into the State, by a means other than the usual tank or receptacle connected with the engine of a motor vehicle, for use ~~in a motor vehicle owned or operated~~ by that person.

~~(8)~~(11) Use. -- The term includes the receipt of fuel in the fuel supply tank of a motor vehicle and the receipt of fuel in a receptacle from which fuel is supplied to a motor vehicle.

~~(9)~~(12) User. -- A person who owns or operates a fuel-propelled motor vehicle licensed under Chapter 20 and who does not maintain storage facilities for fueling the motor vehicle.

~~(10)~~(13) User-seller. -- A bulk-user or a reseller.

~~A bulk-user is a person who maintains storage facilities for fuel and who dispenses the fuel into the fuel supply tank of, or attached to, a motor vehicle owned or operated by that person.~~

~~A reseller is a person who maintains storage facilities for fuel and who sells the fuel at retail or dispenses the fuel at a retail location into the fuel supply tank of, or attached to, a motor vehicle.~~"

Sec. 5. G.S. 105-449.9 reads as rewritten:

"§ *105-449.9. License required of user and user-seller.*

(a) License. -- ~~Every user, except a user whose use of fuel is limited to private passenger motor vehicles and other motor vehicles licensed under Chapter 20 at 6,000 pounds or less, and every user-seller shall obtain a license from the Secretary.~~ A user who uses fuel to propel a motor vehicle having a registered gross vehicle weight of at least 10,001 pounds must have a user's license. A user-seller must have a user-seller's license unless the user-seller is also a supplier and is licensed as a supplier. ~~When issued, a~~ A user's license or a user-seller's license ~~is effective~~ remains in effect until ~~it is~~ cancelled.

(b) Application. -- To obtain a user's license or a user-seller's license, an applicant must file an application with the Secretary on a form provided by the Secretary. An application must include the applicant's name and address and any other information required by the Secretary."

Sec. 6. G.S. 105-449.10, as amended by Section 1 of Chapter 182 of the 1991 Session Laws, reads as rewritten:

"§ *105-449.10.* ~~*Reports*~~ *Report of fuel use and payment of tax by user.*

~~(a) Report.-- Each user required to be licensed under this Article shall keep records and make reports to the Secretary in accordance with regulations adopted by the Secretary. The records and reports shall show all purchases, sales, deliveries, and use of fuel by the licensed user. A licensed user shall file a report on a quarterly basis unless the Secretary has given the licensed user permission to file a report on an annual basis. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.~~

~~The Secretary may authorize a licensed user to file an annual report if either of the following applies:~~

- ~~(1) The licensed user is not a motor carrier under Article 36B of this Chapter.~~
- ~~(2) The licensed user is a motor carrier under Article 36B of this Chapter but is not required to file a quarterly report under G.S. 105-449.45.~~

~~An annual report covers a fiscal year beginning on July 1 and ending on the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a licensed user must apply to the Secretary for permission to file on an annual basis. An~~

~~application must be submitted by the date set by the Secretary. Once granted permission, a licensed user may continue to file an annual report until notified by the Secretary to file a quarterly report.~~

~~(b) Payment.-- A user who acquires nontaxpaid fuel is liable for the tax levied by this Article on the fuel. A licensed user shall pay the tax due on nontaxpaid fuel acquired during a reporting period when filing a report for that period. An unlicensed user who acquires nontaxpaid fuel shall report the fuel and pay the tax due on the fuel in the same manner as a licensed user.~~

(a) General. -- A user who is required to have a user's license must keep records and comply with either subsection (b) or subsection (c), as appropriate. The records must account for all fuel used by the user to propel a motor vehicle.

(b) Motor Carrier. -- A user who is a motor carrier and who files a quarterly or an annual report under G.S. 105-449.45 does not have to file a report under this section. A user who is a motor carrier and who does not file either a quarterly or an annual report under G.S. 105-449.45 must file a report under this section. A report by a motor carrier must state the total number of miles driven during the reporting period by motor vehicles operated by the motor carrier and the total amount of fuel the motor carrier bought in the State during the reporting period for use in motor vehicles operated by the motor carrier.

A motor carrier who has to file a report must file a quarterly report unless the Secretary has given the motor carrier permission to file an annual report. A quarterly report covers a calendar quarter and is due by the last day in April, July, October, and January.

The Secretary may authorize a motor carrier to file an annual report if the motor carrier is in compliance with this Article and Article 36B of this Subchapter. An annual report covers a fiscal year beginning July 1 and ending the following June 30 and is due by July 31 after the end of a fiscal year. To file an annual report, a motor carrier must apply to the Secretary for permission to file on an annual basis. Once granted permission, a motor carrier may continue to file an annual report until notified by the Secretary to file a quarterly report.

(c) Other Users. -- A user who is required to have a user's license but is not a motor carrier must file an annual statement certifying that the user either did not use any nontaxpaid fuel in a motor vehicle during the preceding fiscal year or paid tax on any nontaxpaid fuel acquired during the preceding fiscal year for use in a motor vehicle. A statement must be filed with the Secretary by July 31 of each year.

(d) Payment. -- A user who acquires nontaxpaid fuel is liable for the tax levied by this Article on the fuel. Tax due on nontaxpaid fuel acquired during a reporting period by a user who must file a report

under this section or G.S. 105-449.45 is due when the report for that reporting period is due. Tax due on nontaxpaid fuel acquired by a user who does not have to file a report under this section or G.S. 105-449.45 must be paid to the Secretary within 45 days after the fuel is acquired."

Sec. 7. G.S. 105-449.12 reads as rewritten:

"*§ 105-449.12. Record of ~~licenses.~~ applicants for a license and license holders.*

The Secretary shall ~~keep and file all applications with an alphabetical index thereof, together with a record of all licensed suppliers and user-sellers.~~ keep a record of the following:

(1) Applicants for a license under this Article.

(2) Persons to whom a license has been issued under this Article.

(3) Persons who hold a current license issued under this Article, by license category."

Sec. 8. G.S. 105-449.13 reads as rewritten:

"*§ 105-449.13. ~~Secretary to furnish licensed~~ Licensed supplier ~~with~~ may obtain list of licensed users and user-sellers.*

The Secretary shall ~~upon request furnish to each licensed supplier a list showing the name and business address of each licensed user-seller as of the beginning of each fiscal year, and shall thereafter, during such year, supplement such list monthly.~~ give a list of licensed users, licensed user-sellers, or both to each licensed supplier who asks for a copy of the list. The list shall state the name and business address of each of the requested group of license holders as of the first day of the fiscal year. The Secretary shall send a monthly update of the appropriate list to each supplier who requested a copy of the list."

Sec. 9. G.S. 105-449.16(a) reads as rewritten:

"(a) A tax ~~at the rate established pursuant to G.S. 105-434~~ is imposed upon all of the following fuel:

(1) ~~Sold~~ Fuel sold or delivered by a supplier to a licensed ~~user-seller;~~ user-seller.

(2) ~~Used~~ Fuel used by a supplier in a motor vehicle owned, leased, or operated by the ~~supplier;~~ supplier.

(3) ~~Delivered~~ Fuel delivered by a supplier directly into the fuel supply tank of a motor ~~vehicle;~~ vehicle.

(4) ~~Imported~~ Fuel imported by a user-seller into this State, by a means other than carrying the fuel in a fuel supply tank of a motor vehicle, for resale or to propel a motor ~~vehicle; or~~ vehicle.

(5) ~~Acquired~~ Fuel acquired tax free by a user-seller or user in this State for resale or to propel a motor vehicle.

The tax on liquid fuel is at the rate established under G.S. 105-434. The tax on non-liquid fuel is at a rate equivalent to the rate of tax on liquid fuel, as determined by the Secretary. A supplier who consigns fuel to a reseller may elect to report and pay the tax due on the fuel when the reseller sells or dispenses the fuel instead of when the supplier delivers the fuel to the reseller.

The primary purposes of this levy and this Article are to provide a more efficient and effective method of collecting the tax now imposed and collected pursuant to G.S. 105-435, by providing for the collection of the tax from the supplier instead of the user. The tax levied by this Article is in lieu of rather than in addition to the tax levied by G.S. 105-435; payment of the tax levied by this Article constitutes compliance with G.S. 105-435."

Sec. 10. G.S. 105-449.17, as amended by Section 10 of Chapter 42 of the 1991 Session Laws, reads as rewritten:

"§ *105-449.17. Exemption for fuel sold for nonhighway use.*

The tax imposed by this Article does not apply to fuel sold or delivered by a supplier to a user or user-seller when ~~the~~ all of the following apply:

(1) The fuel is for a purpose other than to propel a motor ~~vehicle and the~~ vehicle.

(2) The supplier dispenses the fuel into a storage facility ~~of the user-seller~~ that is not required to be marked or is marked as follows with the phrase 'For Nonhighway Use' or a similar phrase that clearly indicates the fuel is not to be used to propel a motor ~~vehicle.~~ vehicle:

a. The storage tank of the storage facility must be marked if the storage tank is visible.

b. The fillcap or spill containment box of the storage facility must be marked.

c. The dispensing device that serves the storage facility must be marked.

A storage facility must be marked unless it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

(3) The supplier does not know or have reason to know the fuel is to be used to propel a motor vehicle.

A supplier is liable for the tax due on fuel dispensed into a storage facility of a user or user-seller that is required to be marked but is not marked to indicate the fuel is to be used for a purpose other than to propel a motor vehicle. A user or user-seller is liable for the tax due on fuel dispensed by a supplier into a storage facility that is marked

for nonhighway use and is subsequently used or sold for use to propel a motor vehicle."

Sec. 11. G.S. 105-449.19 reads as rewritten:

"§ *105-449.19. ~~Tax reports; computation and payment of tax.~~ Time when supplier must file return and pay any tax due.*

~~On or before the twenty-fifth day of each calendar month, each supplier of liquid fuel shall render to the Secretary a statement on forms prepared and furnished by the Secretary, which shall show the quantity of fuel on hand on the first and last days of the preceding calendar month, the quantity received during the month and the quantity sold to user-sellers or delivered into motor vehicles; and each supplier of fuels which are not liquid shall keep such records and make such reports of inventory as the Secretary shall by regulation prescribe in order to show accurately the quantity of such fuel used by such supplier, sold to user-sellers, or delivered into motor vehicles owned by others and pay a tax thereon which as calculated by the Secretary, would be equivalent to the tax levied on liquid fuels. Each such supplier shall at the time of rendering such report pay to the Secretary the tax or taxes herein levied during the preceding calendar month.~~

(a) Return. -- A supplier of fuel who acquires, sells, delivers, or uses part or all of the fuel to propel a motor vehicle must file a monthly return. A supplier of fuel who sells, delivers, or uses fuel only for a purpose other than to propel a motor vehicle must file a quarterly return. A return must be filed with the Secretary on a form provided by the Secretary. A monthly return covers a calendar month and is due within 25 days after the end of each month. A quarterly return covers a calendar quarter and is due within 30 days after the end of each quarter. A supplier must pay any tax due on fuel acquired, sold, delivered, or used by the supplier during a reporting period when filing a return for that period.

(b) Information. -- A return filed by a supplier must contain all of the following information:

(1) The amount of fuel the supplier had on hand on the first and last days of the reporting period.

(2) The amount of fuel the supplier received during the reporting period.

(3) The amount of fuel the supplier used during the reporting period to propel a motor vehicle and the amount of fuel the supplier used during the reporting period for a purpose other than to propel a motor vehicle, stated separately.

(4) The amount of fuel the supplier sold or delivered to a licensed bulk-user, a licensed reseller, a licensed user, or other persons, stated separately."

Sec. 12. G.S. 105-449.20, as amended by Section 11 of Chapter 42 of the 1991 Session Laws, reads as rewritten:

"*§ 105-449.20. When Secretary may estimate tax liability of supplier or user-seller.*

Whenever a supplier or a user-seller fails to file a report under G.S. 105-449.19 or 105-449.21 or files a false report under one of those statutes, the Secretary shall determine, from any information obtainable, the number of gallons of fuel with respect to which the supplier or user-seller owes tax under this Article. When a user-seller sells or uses more fuel than the user-seller reports to the Secretary as having been purchased from a supplier, the user-seller is presumed to have acquired the ~~additional~~ unreported fuel tax-free to propel a motor vehicle. When a user-seller sells or uses more fuel to propel a motor vehicle than the user-seller reports to the Secretary as having been purchased from a supplier to propel a motor vehicle, the user-seller is presumed to have acquired tax-free to propel a motor vehicle all fuel not reported as having been acquired to propel a motor vehicle."

Sec. 13. G.S. 105-449.26 reads as rewritten:

"*§ 105-449.26. ~~Invoices or delivery tickets.~~ User-sellers and certain suppliers must give receipts for fuel sold at retail.*

(a) Receipt. -- ~~Each sale of liquid fuel by a user-seller shall be evidenced by an invoice or delivery ticket with the name and address of the user-seller printed or stamped thereon and showing the name and address of the purchaser, date of purchase, number of gallons, price per gallon, tax per gallon, and total amount. One copy of such invoice shall be delivered to the purchaser at the time of sale, and a copy thereof shall be retained by the user-seller and preserved as other records are required to be preserved under this Article.~~ A user-seller and a supplier who is also a reseller but is licensed only as a supplier must give a receipt to each person who buys at retail from any of the following locations either 25 gallons or more of fuel to propel a motor vehicle or any amount of diesel for any other purpose:

(1) A retail service station or other retail establishment operated by the user-seller or supplier.

(2) A bulk storage facility of the user-seller or supplier to which the buyer came to buy the fuel.

(3) Any other location at which the user-seller or supplier dispenses fuel into a motor vehicle.

A user-seller or supplier shall prepare only one original receipt for each sale of fuel, shall give the original to the buyer at the time of the sale, and shall keep a copy of the receipt. A user-seller or supplier who gives a person a copy of a receipt shall clearly mark the copy as a duplicate. If the Secretary determines that a user-seller or a supplier has sold nontaxpaid fuel at retail to propel a motor vehicle, the

Secretary may require the user-seller or supplier to give a receipt to each person who buys any amount of fuel at retail to propel a motor vehicle. A user-seller or supplier is liable for tax and the inspection fee on diesel sold for a purpose other than to propel a motor vehicle if the user-seller or supplier does not have a receipt for the diesel sold.

(b) Content. -- ~~Not more than one original copy of any invoice for a single sale of fuel shall be prepared by any person. If an additional copy is required at any time, such copy shall be plainly marked "Duplicate," and the number of the original ticket or invoice shall be indicated thereon.~~ A receipt shall include all of the following information:

(1) The name and address of the user-seller or supplier.
(2) The name and address of the person buying the fuel.
(3) The date the fuel was sold.
(4) The amount of fuel sold.
(5) The type of fuel sold.
(6) The total sales price of the fuel.
(7) Either of the following:
   a. The company name and company unit number of the motor vehicle into which the fuel was dispensed.
   b. The license plate number of the motor vehicle into which the fuel was dispensed and the state that issued the license plate."

Sec. 14. G.S. 105-449.33 reads as rewritten:

"§ *105-449.33. Equipment of vehicle ~~in which liquid fuel transported for sale or delivery~~, transporting diesel.*

~~No vehicle having attached thereto a tank in which liquid fuel is transported for sale or delivery shall be equipped with any connection between the tank in which such fuel is transported for sale or delivery and the motor or fuel tank of the vehicle through which fuel may be supplied for consumption in the motor thereof.~~ A motor vehicle that transports diesel in a tank that is separate from the fuel supply tank of the motor vehicle may not have a connection from the transporting tank to the motor or to the supply tank of the motor vehicle."

Sec. 15. Notwithstanding G.S. 105-449.17, a storage facility for special fuel is not required to be marked for nonhighway use if it contains fuel used only in heating, drying crops, or a manufacturing process and is installed in a manner that makes use of the fuel for any other purpose improbable.

Sec. 16. Sections 4 through 14 of this act become effective January 1, 1992. The remaining sections of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 390 **CHAPTER 442**

AN ACT TO AUTHORIZE FEES FOR PLANT PEST INSPECTION AND CERTIFICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-420 reads as rewritten:

"*§ 106-420. Authority of Board of Agriculture to adopt regulations.*

The Board of Agriculture is hereby authorized to adopt reasonable regulations to implement and carry out the purposes of this Article as to eradicate, repress and prevent the spread of plant pests (i) within the State, (ii) from within the State to points outside the State, and (iii) from outside the State to points within the State. The Board of Agriculture shall adopt regulations for eradicating such plant pests as it may deem capable of being economically eradicated, for repressing such as cannot be economically eradicated, and for preventing their spread within the State. Regulations may provide for quarantine of areas. It may also adopt reasonable regulations for preventing the introduction of dangerous plant pests from without the State, and for governing common carriers in transporting plants, articles or things liable to harbor such pests into, from and within the State. The Board is authorized, in order to control plant pests, to adopt regulations governing the inspection, certification and movement of nursery stock, (i) into the State from outside the State, (ii) within the State, and (iii) from within the State to points outside the State. The Board is further authorized to prescribe and collect a schedule of fees to be collected for its nursery inspection, nursery dealer certification, ~~and narcissus bulb inspection~~ narcissus bulb inspection, plant pest inspection, and plant pest certification activities."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 414 **CHAPTER 443**

AN ACT TO RAISE THE MAXIMUM AMOUNT AND TO LOWER THE SERVICE REQUIREMENT FOR ELIGIBILITY IN THE REGISTER OF DEEDS' SUPPLEMENTAL PENSION FUND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 161-50.4(a) reads as rewritten:

"(a) Each county register of deeds who has retired with at least 12 years eligible service as register of deeds from the Local

Governmental Employees' Retirement System or an equivalent locally sponsored plan before June 30, 1988, and those who retire ~~thereafter~~ on or after June 30, 1988, but before July 1, 1991, and who have completed at least 12 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article, beginning July 1, 1988. Effective July 1, 1991, each county register of deeds who retires with at least 10 years of eligible service as register of deeds is entitled to receive a monthly pension under this Article."

Sec. 2. G.S. 161-50.5(a) reads as rewritten:

"(a) An eligible retired register of deeds shall be entitled to receive an annual pension benefit, payable in equal monthly installments, equal to one share for each full year of eligible service as register of deeds multiplied by his total number of years of eligible service. The amount of each share shall be determined by dividing the total number of years of eligible service for all eligible retired registers of deeds on December 31 of each calendar year into the amount to be disbursed as monthly pension payments in accordance with the provisions of G.S. 161-50.3. In no event, however, shall a monthly pension under this Article exceed an amount, which when added to a retirement allowance at retirement from the Local Governmental Employees' Retirement System or an equivalent locally sponsored plan, and a determined life annuity value of benefits payable at the time of retirement from contributions other than his own and earnings thereon from the Supplemental Retirement Income Plan pursuant to Chapter 135 of the General Statutes as determined by the Department of State Treasurer and the Plan's Board of Trustees, is greater than ~~sixty-five percent (65%)~~ seventy-five percent (75%) of a register of deed's equivalent annual salary immediately preceding retirement computed on the latest monthly base rate, to a maximum amount of one thousand ~~dollars ($1,000).~~ two hundred dollars ($1,200)."

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 642 **CHAPTER 444**

AN ACT TO INCORPORATE CHIMNEY ROCK VILLAGE IN RUTHERFORD COUNTY.

The General Assembly of North Carolina enacts:

Section 1. A charter for the Village of Chimney Rock is enacted to read:

"CHARTER OF CHIMNEY ROCK VILLAGE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1-1. *Incorporation and Corporate Powers.* The inhabitants of Chimney Rock Village are a body corporate and politic under the name 'Chimney Rock Village.' Under that name they have all the powers, duties, rights, privileges, and immunities conferred and imposed on cities by the general law of North Carolina.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2-1. *Town Boundaries.* Until modified in accordance with the law, the boundaries of Chimney Rock Village are as follows: BEGINNING at a point in the Broad River (Rocky Broad River) at the Chimney Rock Park entrance, the village boundary follows the Rocky Broad River westward to the Henderson County boundary, then proceeds northward along the county border between Rutherford County and Henderson County to the point where the Chimney Rock Fire District begins; then follows the Chimney Rock Fire District boundary to Cedar Knob and follow the Fire District line as it continues northward along the Rutherford County and Buncombe County boundaries; at Shumont Mountain, the Village boundary turns eastward, following the Chimney Rock Fire District and proceeds to the Town of Lake Lure town limits line; then follows the Town of Lake Lure Town limits across the Rocky Broad River, turning westward following the Chimney Rock Park boundary and Lake Lure Town limits to the point of beginning in the Rocky Broad River at the Chimney Rock Park entrance.

"CHAPTER III.

"GOVERNING BODY.

"Sec. 3-1. *Structure of Governing Body; Number of Members.* The governing body of Chimney Rock Village is the Village Council, which has five members.

"Sec. 3-2. *Manner of Electing Council.* The qualified voters of the entire Village elect the members of the Council.

"Sec. 3-3. *Term of Office of Council Members.* Members of the Council are elected to four-year terms. At the initial election in 1991, the three highest vote getters shall be elected to four-year terms and the next two highest vote getters shall be elected to two-year terms. In 1993 and quadrennially thereafter, two members of the Council shall be elected for four-year terms. In 1995 and quadrennially thereafter, three members of the Council shall be elected for four-year terms.

"Sec. 3-4. *Election of Mayor; Term of Office.* At the organizational meeting of the Council following each election, the Council shall elect one of its members to serve as Mayor. The Mayor serves as such at the pleasure of the Council.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4-1. *Conduct of Village Elections.* Village officers shall be elected on a nonpartisan basis and results determined by a plurality as provided in G.S. 163-292.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5-1. *Village to Operate Under Mayor-Council Plan.* The Village of Chimney Rock operates under the Mayor-Council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. Until the organizational meeting of the Village Council of Chimney Rock following the 1991 municipal election, Barbara Meliski, Mike Keys, Steve Gale, Randy Griffin, and Mark Piper shall serve as members of the Village Council. Mark Piper is authorized to call the first meeting of the interim governing body. The interim governing body shall, at its first meeting, elect from among its members a chairman who shall have the powers of a mayor provided by general law.

Sec. 3. From and after the effective date of this act, the citizens and property in Chimney Rock Village shall be subject to municipal taxes levied for the year beginning July 1, 1991, and for that purpose the Village shall obtain from Rutherford County a record of property in the area herein incorporated which was listed for taxes as of January 1, 1991. The Village may adopt a budget ordinance for fiscal year 1991-92 without following the timetable in the Local Government Budget and Fiscal Control Act, but shall follow the sequence of actions in the spirit of the act insofar as is practical. For fiscal year 1991-92, ad valorem taxes may be paid at par or face amount within 90 days of adoption of the budget ordinance, and thereafter in accordance with the schedule in G.S. 105-360 as if the taxes had been due and payable on September 1, 1991.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 672 **CHAPTER 445**

AN ACT TO PROVIDE FOR THE FILING PERIOD FOR THE CUMBERLAND COUNTY BOARD OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding any provision of Chapters 115C or 163 of the General Statutes, or of A PLAN TO PROVIDE FOR THE MERGER AND CONSOLIDATION OF THE FAYETTEVILLE

CITY BOARD OF EDUCATION AND THE CUMBERLAND COUNTY BOARD OF EDUCATION AND TO ESTABLISH ONE ADMINISTRATIVE BOARD OF EDUCATION FOR ALL OF THE PUBLIC SCHOOLS IN CUMBERLAND COUNTY, as approved under G.S. 115C-67 and as amended by the General Assembly, candidates for the Cumberland County Board of Education shall file their notices of candidacy with the Cumberland County Board of Education not earlier than 12:00 noon on the first Friday in July and not later than 12:00 noon on the first Friday in August.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 682 **CHAPTER 446**

AN ACT TO INCREASE THE MAXIMUM FINE FOR VIOLATIONS OF ORDINANCES FROM FIFTY DOLLARS TO FIVE HUNDRED DOLLARS, BUT ONLY IF THE ORDINANCE SPECIFICALLY PROVIDES FOR THE HIGHER PENALTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-4 reads as rewritten:

"§ *14-4. Violation of local ordinances misdemeanor.*

(a) Except as provided in subsection (b), if any person shall violate an ordinance of a county, city, or town, he shall be guilty of a misdemeanor and shall be fined not more than ~~fifty dollars ($50.00),~~ five hundred dollars ($500.00), or imprisoned for not more than 30 days. No fine shall exceed fifty dollars ($50.00) unless the ordinance expressly states that the maximum fine is greater than fifty dollars ($50.00).

(b) If any person shall violate an ordinance of a county, city, or town regulating the operation or parking of vehicles, he shall be responsible for an infraction and shall be required to pay a penalty of not more than fifty dollars ($50.00)."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date. This act repeals all laws in conflict herewith.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 686 **CHAPTER 447**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF WALNUT COVE.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Walnut Cove is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF WALNUT COVE.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Walnut Cove, North Carolina, in Stokes County and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Walnut Cove,' also referred to as the 'Town.'

"Sec. 1.2. *Powers.* The Town has and may exercise all of the powers, duties, rights, privileges and immunities conferred upon the Town of Walnut Cove specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Stokes County Register of Deeds and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Mayor and Board of Commissioners.* The Mayor and the Board of Commissioners, hereinafter referred to as the 'Board' comprise the governing body of the Town.

"Sec. 2.2. *Board of Commissioners; Composition; Terms of Office.* The Board is composed of four Commissioners elected by all the qualified voters of the Town for staggered terms of four years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the Town for a term of two years or until a successor is elected and qualified; is the official head of the Town government and presides at meetings of the Board; has the right to vote only when there is an equal division on any question or matter before the Board; and exercises the powers and duties conferred by law or as directed by the Board.

"Sec. 2.4. *Mayor Pro Tempore.* The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in that capacity until the

organizational meeting following the next regular municipal election, despite the contrary provisions of G.S. 160A-70.

"Sec. 2.5. *Meetings.* In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Voting Requirements; Quorum.* Official actions of the Board and all votes are taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-74 apply.

"Sec. 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Commissioners are in accordance with general law. Vacancies that occur in any elective office of the Town are filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections are held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Election of Board of Commissioners.* The Commissioners serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified. Four Commissioners shall be elected at the regular municipal election in 1991. The two persons receiving the highest numbers of votes shall be elected to four-year terms, and the two persons receiving the next highest numbers of votes shall be elected to two-year terms. In 1993, and quadrennially thereafter, two Commissioners shall be elected to four-year terms. In 1995, and quadrennially thereafter, two Commissioners shall be elected to four-year terms.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in each regular municipal election.

"Sec. 3.4. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. *Form of Government.* The Town operates under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Manager.* The Board shall appoint a Town Manager who shall be responsible for the administration of all departments of the Town government. The Town Manager has all the powers and duties conferred by general law, except as expressly

limited by the provisions of this Charter, and has the additional powers and duties conferred by the Board, so far as authorized by general law.

"Sec. 4.3. *Town Clerk.* The Town Manager shall appoint a Town Clerk to keep a journal of the proceedings of the Board; to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Board may direct.

"Sec. 4.4. *Tax Collector.* The Town Manager shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Sec. 4.5. *Town Attorney.* The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials and perform other duties required by law or as the Board may direct.

"Sec. 4.6. *Other Administrative Officers and Employees.* The Board may authorize other positions to be filled by appointment by the Town Manager, and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. ADDITIONAL PROVISIONS.

"Sec. 5.1. *Alcoholic Beverage Control Stores.* Alcoholic Beverage Control Stores shall operate within the Town of Walnut Cove as provided in Chapter 832, Session Laws of 1969, as amended by Chapter 307, Session Laws of 1973, and Chapter 289, Session Laws of 1985."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Walnut Cove and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs or government of public schools, or acts validating official actions, proceedings, contracts or obligations of any kind.

Sec. 4. All acts in conflict with this act are repealed. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 60, Private Laws of 1889
Chapter 296, Private Laws of 1907
Chapter 224, Private Laws of 1915
Chapter 65, Private Laws of 1923
Chapter 584, Session Laws of 1945

Chapter 924, Session Laws of 1947
Chapter 1139, Session Laws of 1949
Chapter 417, Session Laws of 1971.

Sec. 5. The Mayor and Board members serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interest that arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions and other provisions of the Town of Walnut Cove not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies is abated or otherwise affected by this act.

Sec. 9. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 884 **CHAPTER 448**

AN ACT TO CLARIFY THE MANDATORY SEAT BELT LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-135.2A(c)(2) reads as rewritten:

"(2) A motor vehicle operated by a rural letter carrier of the United States Postal Service while performing duties as a rural letter ~~carrier;~~ carrier and a motor vehicle operated by a newspaper delivery person while actually engaged in delivery of newspapers along the person's specified route;".

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 1064 **CHAPTER 449**

AN ACT TO AMEND THE AXLE REQUIREMENTS FOR MOTOR HOMES AND CERTAIN TRUCKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-116(d) reads as rewritten:

"(d) A single vehicle having two axles shall not exceed 35 feet in length of extreme overall dimensions inclusive of front and rear bumpers. Provided, however, a bus or motor home with two axles ~~may be up to~~ shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. A single vehicle having three axles shall not exceed 40 feet in length overall of dimensions inclusive of front and rear bumpers. Provided, further, trucks transporting unprocessed cotton from farm to gin shall not exceed 48 feet in length overall of dimensions inclusive of front and rear bumpers. A truck-tractor and semitrailer shall be regarded as two vehicles for the purpose of determining lawful length and license taxes."

Sec. 2. G.S. 20-4.01(27) reads as rewritten:

"(27) Passenger Vehicles. --

a. Excursion passenger vehicles. -- Vehicles transporting persons on sight-seeing or travel tours.

b. For hire passenger vehicles. -- Vehicles transporting persons for compensation. This classification shall not include vehicles operated as ambulances; vehicles operated by the owner where the costs of operation are shared by the passengers; vehicles operated pursuant to a ridesharing arrangement as defined in G.S. 136-44.21; vehicles transporting students for the public school system under contract with the State Board of Education or vehicles leased to the United States of America or any of its agencies on a nonprofit basis; or vehicles used for human service or volunteer transportation.

c. Common carriers of passengers. -- Vehicles operated under a franchise certificate issued by the Utilities Commission for operation on the highways of this State between fixed termini or over a regular route for the transportation of persons or property for compensation.

d. Motorcycles. -- Vehicles having a saddle for the use of the rider and designed to travel on not more than three wheels in contact with the ground, including motor scooters and motor-driven bicycles, but

excluding tractors and utility vehicles equipped with an additional form of device designed to transport property, three-wheeled vehicles while being used by law-enforcement agencies and mopeds as defined in subdivision d1 of this subsection.

d1. Moped. -- Vehicles having two or three wheels and operable pedals and equipped with a motor which does not exceed 50 cubic centimeters piston displacement and cannot propel the vehicle at a speed greater than 20 miles per hour on a level surface.

d2. Motor home or house car. -- A vehicular unit, designed to provide temporary living quarters, built into as an integral part, or permanently attached to, a self-propelled motor vehicle chassis or van. The vehicle must provide at least four of the following facilities: cooking, refrigeration or icebox, self-contained toilet, heating or air conditioning, a portable water supply system including a faucet and sink, separate 110-125 volt electrical power supply, or an LP gas supply.

e. U-drive-it passenger vehicles. -- Vehicles rented or leased to be operated by the lessee. This shall not include vehicles of nine-passenger capacity or less which are leased for a term of one year or more to the same person or vehicles leased or rented to public school authorities for driver-training instruction.

f. Ambulances. -- Vehicles equipped for transporting wounded, injured, or sick persons.

g. Private passenger vehicles. -- All other passenger vehicles not included in the above definitions."

Sec. 2.1. G.S. 20-116(f) reads as rewritten:

"(f) The load upon any vehicle operated alone, or the load upon the front vehicle of a combination of vehicles, shall not extend more than three feet beyond the front wheels of such vehicle or the front bumper of such vehicle, if it is equipped with such a bumper. Under this subsection 'load' shall include the boom on a self-propelled vehicle."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

H.B. 1097 **CHAPTER 450**

AN ACT TO REQUIRE THAT HAZARDOUS WASTE BE PLACED IN CONTAINERS PRIOR TO DISPOSAL IN A HAZARDOUS WASTE DISPOSAL FACILITY AND TO AMEND THE REQUIREMENTS APPLICABLE TO RESIDENT INSPECTORS ASSIGNED TO SPECIAL PURPOSE COMMERCIAL HAZARDOUS WASTE FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. Part 2 of Article 9 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130-295.02. Additional requirement for hazardous waste disposal facilities; hazardous waste to be placed in containers.*

(a) For purposes of this section, the term 'container' means any portable device into which waste is placed for storage, transportation, treatment, disposal, or other handling, and includes the first enclosure which encompasses the waste.

(b) All hazardous waste shall be placed in containers for disposal, except as the Commission shall provide for by rule. The Commission shall adopt standards for the design and construction of containers for disposal. Standards for containers may vary for different types of waste. The standards for disposal containers may supplement or duplicate any of the performance or engineering standards for hazardous waste disposal facilities required under State or federal law; however, the performance or engineering standards for hazardous waste disposal facilities are separate and cumulative, and the performance or engineering standards for hazardous waste disposal facilities and containers may not substitute for or replace one another."

Sec. 2. G.S. 130A-295.02(j) reads as rewritten:

"(j) For purposes of this subsection, special purpose commercial hazardous waste facilities include: a facility that manages limited quantities of hazardous waste; a facility that limits its hazardous waste management activities to reclamation or recycling, including energy or materials recovery or a facility that stores hazardous waste primarily for use at such facilities; or a facility that is determined to be low risk under rules adopted by the Commission pursuant to this subsection. The Commission ~~may~~ shall adopt rules establishing reasonable times and frequencies for the presence of a resident inspector on less than a full-time basis at special purpose commercial hazardous waste ~~facilities which manage limited quantities of hazardous waste.~~ facilities. ~~Rules providing for resident inspectors on less than a full-time basis shall be based on such factors as the smallness of the facility.~~ Rules adopted

pursuant to this subsection shall establish classifications of special purpose hazardous waste facilities based on factors including, but not limited to, the size of the facility, the type of treatment or storage being performed, the nature and volume of waste being ~~treated,~~ treated or stored, the uniformity, similarity, or lack of diversity of the waste streams, the predictability of the nature of the waste streams and their treatability, whether the facility utilizes automated monitoring or safety devices that adequately perform functions that would otherwise be performed by a resident inspector, the fact that reclamation or recycling is being performed at the facility and the compliance history of the facility and its operator. Special purpose commercial hazardous waste facilities shall be subject to inspection at all times during which the facility is in operation, undergoing any maintenance or repair, or undergoing any test or calibration. Rules adopted pursuant to this subsection shall specify a minimum number of inspections during such times as the facility is subject to inspection. Commercial hazardous waste facilities that utilize hazardous waste as a fuel source shall be inspected a minimum of 40 hours per week. The Department shall maintain records of all inspections at special purpose commercial hazardous waste facilities. Such records shall contain sufficient detail and shall be arranged in a readily understandable format so as to facilitate determination at any time as to whether the special purpose commercial hazardous waste facility is in compliance with the requirements of this subsection and of rules adopted pursuant to this subsection."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.B. 205 **CHAPTER 451**

AN ACT TO REPEAL THE SUNSET PROVISION FOR THE UTILITY REGULATORY FEE STATUTE.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 787 of the 1989 Session Laws reads as rewritten:

"Sec. 5. This act shall become effective July 1, ~~1989,~~ 1989 and shall apply to public utility North Carolina jurisdictional revenues earned on or after that ~~date,~~ date. ~~and shall expire June 30, 1991, and the proceeds and interest remaining in the Fund created by this act upon expiration of this act shall revert to the General Fund.~~"

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.B. 961 **CHAPTER 452**

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1991.

The General Assembly of North Carolina enacts:

-----BUDGET CONTINUATION

Section 1. The Director of the Budget may continue to allocate funds for expenditure for current operations by State departments, institutions, and agencies, except for funds for local inventory and other reimbursements, at a level not to exceed ninety-four percent (94%) of the level at which total expenditures for State operations were authorized by the General Assembly as of June 30, 1991. The Director of the Budget shall not allocate funds for any of the purposes set out in the base budget reductions contained in House Bill 83, 4th edition, and House Bill 83, 5th edition as amended, that are not in controversy.

To the extent necessary to implement this authorization, there is appropriated from the appropriate State funds and cash balances, federal receipts, and departmental receipts for the 1991-92 fiscal year, funds necessary to carry out this section.

This appropriation and this authorization to allocate and spend funds shall remain in effect until ratification of The Appropriations and Budget Revenue Act of 1991, at which time that act shall become effective and shall govern appropriations and expenditures. Upon ratification of The Appropriations and Budget Revenue Act of 1991, the Director of the Budget shall adjust allocations to give effect to that act from July 1, 1991.

Except as otherwise provided by this act, the limitations and directions for the 1990-91 fiscal year in Chapters 500, 752, 754, 795, 799, and 1066 of the 1989 Session Laws that applied to appropriations to particular agencies or for particular purposes apply to the funds appropriated and authorized for expenditure under this section.

As used in this section, "local inventory and other reimbursements" means reimbursements made to local governments under G.S. 105-164.44C, 105-213.1, 105-275.1, 105-277.1A, and 105-277A.

-----EMPLOYEE SALARIES

Sec. 2. The salary schedules and specific salaries established for fiscal year 1990-91 by or under Sections 24, 25, 29(b), 30(a), 30(c), 31, 32, 33, 34(b), 35(b), 37, 38(a2), 38(b), 38(c1), 38(d1), 39, and 40 of Chapter 752 of the 1989 Session Laws, for offices and positions shall remain in effect until the effective date of The Appropriations and Budget Revenue Act of 1991.

Teachers and other employees shall not move up on these salary schedules or receive automatic, annual, performance, merit, or other increments until authorized by the General Assembly.

-----SALARY RELATED CONTRIBUTIONS/EMPLOYERS

Sec. 3. The State's employer contribution rates budgeted for retirement and related benefits as a percentage of covered salaries for the 1991-92 fiscal year shall remain the same as they were on December 31, 1990. If The Appropriations and Budget Revenue Act of 1991 reduces such rates, the Director of the Budget shall further reduce the rates set in that act for the remainder of the 1991-92 fiscal year so as to compensate for the excess amount contributed between July 1, 1991, and the effective date of The Appropriations and Budget Revenue Act of 1991, so that the effective rate for the entire year reflects The Appropriations and Budget Revenue Act of 1991.

-----DRIVER TRAINING FUNDING

Sec. 4. Expenses incurred in carrying out the provisions of G.S. 20-88.1 from the beginning of the 1991-92 fiscal year until the ratification of The Appropriations and Budget Revenue Act of 1991 shall be paid out of the Highway Fund.

-----MEDICAL DATABASE COMMISSION

Sec. 5. Section 208(d) of Chapter 757 of the 1985 Session Laws reads as rewritten:

"(d) The North Carolina Medical Database Commission shall terminate and Article 11 of Chapter 131E of the General Statutes shall expire on ~~July 1, 1991.~~ August 1, 1991."

-----WAKE COUNTY DETENTION FACILITY

Sec. 5.1. Effective July 1, 1991, the Department of Human Resources shall operate the Wake County Youth Detention Facility as a regional detention facility. Funds available to the Department shall be used for the operational expenses of the facility.

-----COMMUNITY PENALTIES PROGRAM

Sec. 6. (a) All contracts or grants entered into pursuant to G.S. 7A-772 between the Department of Crime Control and Public Safety and the community penalties programs are extended, unless the programs object, for 30 days after the ratification of this act or the effective date of Senate Bill 465, A BILL TO BE ENTITLED AN ACT TO TRANSFER THE COMMUNITY PENALTIES PROGRAM FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC

SAFETY TO THE ADMINISTRATIVE OFFICE OF THE COURTS, if that bill is enacted by the 1991 General Assembly, whichever is sooner.

(b) The Department of Crime Control and Public Safety shall not restructure or reorganize the community penalties programs.

-----EFFECTIVE DATE

Sec. 7. This act becomes effective July 1, 1991. This act expires July 6, 1991.

In the General Assembly read three times and ratified this the 28th day of June, 1991.

S.B. 104 **CHAPTER 453**

AN ACT TO ELIMINATE A TAXPAYER'S DEDUCTION FOR CERTAIN CONTRIBUTIONS OF LAND OR CROPS TO ACCOUNT FOR TAX CREDITS ALLOWED FOR THE SAME CONTRIBUTIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-134.6(c) reads as rewritten:

"(c) Additions. The following additions to taxable income shall be made in calculating North Carolina taxable income, to the extent each item is not included in gross income:

(1) Interest upon the obligations of states, other than this State, and their political subdivisions.

(2) Any amount allowed as a deduction from gross income under the Code that is taxed under the Code by a separate tax other than the tax imposed in section 1 of the Code. The Secretary shall report to the 1991 General Assembly all provisions under the Code for taxing certain amounts separately and shall recommend whether those amounts should be taxed separately under this Division or should be added to taxable income in calculating North Carolina taxable income.

(3) Any amount deducted from gross income under section 164 of the Code as State, local, or foreign income tax to the extent that the taxpayer's total itemized deductions deducted under the Code for the taxable year exceed the standard deduction allowable to the taxpayer under the Code reduced by the amount by which the taxpayer's allowable standard deduction has been increased under section 63(c)(4) of the Code.

(4) The amount by which the taxpayer's standard deduction has been increased under section 63(c)(4) of the Code and the

amount by which the taxpayer's personal exemptions have been increased under section 151(d)(3) of the Code.

(5) The fair market value, up to a maximum of one hundred thousand dollars ($100,000), of the donated property interest for which the taxpayer claims a credit for the taxable year under G.S. 105-151.12 and the market price of the gleaned crop for which the taxpayer claims a credit for the taxable year under G.S. 105-151.14."

Sec. 2. G.S. 105-151.12 reads as rewritten:

"§ *105-151.12. Credit for certain real property donations.*

(a) A person who makes a qualified donation of interests in real property located in North Carolina during the taxable year that is useful for (i) public beach access or use, (ii) public access to public waters or trails, (iii) fish and wildlife conservation, or (iv) other similar land conservation purposes, shall be allowed as a credit against the tax imposed by this Division an amount equal to twenty-five percent (25%) of the fair market value of the donated property interest. To be eligible for this credit, the interest in property must be donated to and accepted by either the State, a local government, or a body that is both organized to receive and administer lands for conservation purposes and is qualified to receive charitable contributions under the Code; provided, however, that lands required to be dedicated pursuant to local governmental regulation or ordinance and dedications made to increase building density levels permitted under such regulations or ordinances are not eligible for this credit. The credit allowed under this section may not exceed twenty-five thousand dollars ($25,000). To support the credit allowed by this section, the taxpayer shall file with the income tax return for the taxable year in which the credit is claimed a certification by the Department of Environment, Health, and Natural Resources that the property donated is suitable for one or more of the valid public benefits set forth by this subsection.

(b) The credit allowed by this section may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowed under this Division, except payments of tax made by or on behalf of the taxpayer.

Any unused portion of this credit may be carried forward for the next succeeding five years.

(c) ~~No credit shall be allowed under this section for amounts deducted from gross income in calculating taxable income under the Code.~~ In order to claim the credit allowed under this section, the taxpayer must add the fair market value of the donated property interest, up to a maximum of one hundred thousand dollars ($100,000), to taxable income as provided in G.S. 105-134.6(c).

(d) In the case of property owned by the entirety, where both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section.

(e) In the case of marshland for which a claim has been filed pursuant to G.S. 113-205, the offer of donation must be made before 31 December 1994 to qualify for the credit allowed by this section."

Sec. 3. G.S. 105-151.14 reads as rewritten:

"§ *105-151.14. Credit for gleaned crop.*

(a) A person who grows a crop and permits the gleaning of the crop shall be allowed as a credit against the tax imposed by this Division an amount equal to ten percent (10%) of the market price of the quantity of the gleaned crop. This credit may not exceed the amount of tax imposed by this Division for the taxable year reduced by the sum of all credits allowable under this Division, except tax payments made by or on behalf of the taxpayer. ~~No credit is allowed under this section for amounts that were deducted from gross income in calculating taxable income under the Code.~~ In order to claim the credit allowed under this section, the taxpayer must add the market price of the gleaned crop to taxable income as provided in G.S. 105-134.6(c). Any unused portion of the credit may be carried forward for the next succeeding five years.

(b) The following definitions apply to this section:

(1) 'Gleaning' means the harvesting of a crop that has been donated by the grower to a nonprofit organization which will distribute the crop to individuals or other nonprofit organizations it considers appropriate recipients of the food.

(2) 'Market price' means the season average price of the crop as determined by the North Carolina Crop and Livestock Reporting Service in the Department of Agriculture, or the average price of the crop in the nearest local market for the month in which the crop is gleaned if the Crop and Livestock Reporting Service does not determine the season average price for that crop.

(3) 'Nonprofit organization' means an organization to which charitable contributions are deductible from gross income under the Code."

Sec. 4. G.S. 105-151.12(d) reads as rewritten:

"(d) In the case of property owned by ~~the entirety,~~ a married couple, where both spouses are required to file North Carolina income tax returns, the credit allowed by this section may be claimed only if the spouses file a joint return under G.S. 105-152.1. Where only one

spouse is required to file a North Carolina income tax return, that spouse may claim the credit allowed by this section."

Sec. 5. Section 4 of this act is effective for taxable years beginning on or after January 1, 1991. The remainder of this act is effective retroactively for taxable years beginning on or after January 1, 1989.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 114 **CHAPTER 454**

AN ACT TO REPEAL INHERITANCE TAX EXEMPTIONS FOR CERTAIN TYPES OF PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-3 reads as rewritten:

"§ *105-3. Property exempt.*

The following property shall be exempt from taxation under this Article:

(1) Property passing to or for the use of any one or more of the following: the United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes.

(2) Property passing to religious, charitable, or educational corporations, or to churches, hospitals, orphan asylums, public libraries, religious, or charitable organizations, or passing to any trustee or trustees for religious or charitable purposes, where such religious, charitable, or educational institutions, corporations, churches, trusts, etc., are located within the State and not conducted for profit.

(3) Property passing to religious, educational, or charitable corporations, foundations or trusts, not conducted for profit, incorporated or created or administered under the laws of any other state: If such other state levies no inheritance or estate taxes on property similarly passing from residents of such state to religious, educational or charitable corporations, foundations or trusts incorporated or created or administered under the laws of this State; or if such corporation, foundation or trust is one receiving and disbursing funds donated in this State for religious, educational or charitable purposes.

(4) The proceeds of all life insurance policies payable to beneficiaries named in subdivisions (1), (2) and (3) of this section. And also proceeds of all policies of insurance and

the proceeds of all adjusted service certificates that have been or may be paid by the United States government, or that have been or may be paid on account of policies required to be carried by the United States government or any agency thereof, to the estate, beneficiary, or beneficiaries of any person who has served in the armed forces of the United States or in the merchant marine during the first or second World War or any subsequent military engagement; and proceeds, not exceeding the sum of twenty thousand dollars ($20,000), of all policies of insurance paid to the estate, beneficiary or beneficiaries of any person whose death was caused by enemy action during the second World War or any subsequent military engagement involving the United States. This provision will be operative only when satisfactory proof that the death was caused by enemy action is filed by the executor, administrator, or beneficiary with the Secretary of Revenue.

~~(5) The value of an annuity or other payment receivable by any beneficiary (other than the executor) under (a) an employees' trust (or under a contract or insurance policy purchased by an employees' trust) forming part of a pension, stock bonus, or profit-sharing plan, which at the time of the decedent's separation from employment (whether by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of 26 U.S.C. § 401(a); or (b) a retirement annuity contract purchased by an employer (and not by an employees' trust) pursuant to a plan, which at the time of decedent's separation from employment (by death or otherwise), or at the time of termination of the plan if earlier, met the requirements of 26 U.S.C. § 403(a) or § 403(b). If such amounts payable after the death of the decedent under a plan described in clause (a) or (b) are attributable to any extent to payments or contributions made by the decedent, no exemption shall be allowed for that part of the value of such amounts in the proportion that the total payments or contributions made by the decedent bears to the total payments or contributions made. For purposes of the preceding sentence contributions or payments made by the decedent's employer or former employer under a trust or plan described in clause (a) or (b) shall not be considered to be contributed by the decedent nor shall any deductible employee contributions within the meaning of 26 U.S.C. § 72(o)(5) be considered to have been contributed by the~~

~~decedent. For purposes of this subdivision, contributions or payments on behalf of the decedent while he was an employee within the meaning of 26 U.S.C. § 401(c)(1) made under a trust or plan described in clause (a) or (b) shall, to the extent allowable as a deduction under 26 U.S.C. § 404, be considered to be made by a person other than the decedent and, to the extent not so allowable, shall be considered to be made by the decedent. Provided, that the value of such annuities or other payments receivable described in this subdivision shall not be exempt unless the payments received therefrom are or will be subject to income taxation under Article 4 of this Subchapter, and if such payments are not or will not be subject to income taxation under Article 4 of this Subchapter the value of such annuities or other payments receivable shall be included in the gross value of the estate of the decedent and taxable under the provisions of this Article.~~

~~(6) The value of an annuity receivable by any beneficiary (other than the executor) under:~~

~~a. An individual retirement account described in section 408(a) of the Code,~~

~~b. An individual retirement annuity described in section 408(b) of the Code, or~~

~~c. A retirement bond described in section 409(a) of the Code.~~

~~If any payment to an account described in paragraph a or for an annuity described in paragraph b or a bond described in paragraph c was not allowable as a deduction under 26 U.S.C. § 219 or § 220 and was not a rollover contribution described in 26 U.S.C. §§ 402(a)(5), 403(a)(4), 408(d)(3), or 409(b)(3)(C), the preceding sentence shall not apply to that portion of the value of the amount receivable under such account, annuity, or bond (as the case may be) which bears the same ratio to the total value of the amount so receivable as the total amount which was paid to or for such account, annuity, or bond and which was not allowable as a deduction under 26 U.S.C. § 219 or § 220 and was not such a rollover contribution bears to the total amount paid to or for such account, annuity, or bond. For purposes of this subdivision, the term 'annuity' means an annuity contract or other arrangement providing for a series of substantially equal periodic payments to be made to a beneficiary (other than the~~

~~executor) for his life or over a period extending for at least 36 months after the date of the decedent's death.~~

~~(7) The total value of proceeds of an annuity or other payment receivable by any beneficiary (other than the executor) under a military family protection, or survivor benefit, plan, or other comparable plan, pursuant to Chapter 73 of Title 10 of the United States Code.~~

(8) Repealed by Session Laws 1989 (Regular Session 1990), c. 970, s. 1.

(9) The total value of death benefits paid to a decedent's estate or a named beneficiary from voluntary pledges made by the North Carolina Highway Patrol or other association of law-enforcement officers employed by the State or a county or municipality, if the benefits are paid from an assessment against the members of the association.

(10) Property passing to the surviving spouse of a decedent."

Sec. 2. This act becomes effective September 1, 1991, and applies to the estates of decedents dying on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 198 **CHAPTER 455**

AN ACT TO INCREASE THE PROCESSING FEE FOR BAD CHECKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25-3-512 reads as rewritten:

"*§ 25-3-512. Collection of processing fee for returned checks.*

A processing fee, not to exceed ~~fifteen dollars ($15.00),~~ twenty dollars ($20.00), may be charged and collected for checks on which payment has been refused by the payor bank because of insufficient funds or because the drawer did not have an account at that bank if at the time the consumer presented the check to the person, a sign:

(1) Was conspicuously posted on or in the immediate vicinity of the cash register;

(2) Was in plain view of anyone paying for goods or services by check;

(3) Was no smaller than 8 by 11 inches; and

(4) Stated the amount of the fee that would be charged for returned checks.

When the drawer sends a check by mail for payment of a debt and the check is dishonored and returned, the processing fee may be collected if the drawer was given prior written notice that a fee would

be charged for returned checks. Any document that clearly and conspicuously states the amount of the fee that will be charged for returned checks and is delivered to the drawer or his agent, or is mailed first-class mail to the drawer at his last known address as part of any document requesting payment of a debt satisfies this notice requirement for that payment only.

If a collection agency collects or seeks to collect on behalf of its principal a processing fee as specified in this section in addition to the sum payable of a check, the amount of such processing fee must be separately stated on the collection notice. The collection agency shall not collect or seek to collect from the drawer any sum other than the actual amount of the returned check and the specified processing fee."

Sec. 2. This act becomes effective October 1, 1991, and applies to checks written on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 245 **CHAPTER 456**

AN ACT TO ENHANCE THE ENFORCEMENT PROVISIONS OF THE NORTH CAROLINA SECURITIES ACT AND THE INVESTMENT ADVISERS ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 2 of Chapter 78A of the General Statutes is amended by adding two new sections to read:

"*§ 78A-11. Unlawful telephone rooms.*

It is unlawful for any person to willfully manage, supervise, control, or own, directly or indirectly, either alone or in association with others, any telephone room in this State. For purposes of this section, 'telephone room' means an enterprise in which two or more persons engage in telephone communications with members of the public using two or more telephones at one location, or more than one location in a common scheme or enterprise, in violation of G.S. 78A-8 or G.S. 78A-12. It is an affirmative defense to a prosecution under this section that the person acted in good faith and did not directly or indirectly induce an act or acts constituting a violation of G.S. 78A-8 or G.S. 78A-12.

"*§ 78A-12. Manipulation of market.*

(a) In addition to the prohibitions of G.S. 78A-8, it is unlawful for any person to:

(1) Willfully quote a fictitious price with respect to a security;

(2) Effect a transaction in a security which involves no change in the beneficial ownership of the security, for the purpose

of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the security;

(3) Enter an order for the purchase of a security with the knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the sale of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the security;

(4) Enter an order for the sale of a security with knowledge that, at substantially the same time, an order of substantially the same size, and at substantially the same price, for the purchase of the security has been, or will be, entered by or for the same person, or an affiliated person, for the purpose of creating a false or misleading appearance of active trading in a security, or a false or misleading appearance of activity with respect to the market for the security; or

(5) Employ any other deceptive or fraudulent device, scheme, or artifice to manipulate the market in a security.

(b) A transaction effected in compliance with the applicable provisions of the Securities Exchange Act of 1934 and the rules and regulations of the Securities and Exchange Commission thereunder is not manipulation of the market under subsection (a) of this section."

Sec. 2. G.S. 78A-46(a) reads as rewritten:

"(a) The Administrator in his discretion

(1) May make such public or private investigations within or outside of this State as he deems necessary to determine whether any person has violated or is about to violate any provision of this Chapter or any rule or order hereunder, or to aid in the enforcement of this Chapter or in the prescribing of rules and forms hereunder,

(2) May require or permit any person to file a statement in writing, under oath or otherwise as the Administrator determines, as to all the facts and circumstances concerning the matter to be investigated, ~~and~~

(3) May publish information concerning any violation of this Chapter or any rule or order ~~hereunder.~~ hereunder, and

(4) May appoint employees of the Securities Division as securities law enforcement agents and as other enforcement personnel.

a. Subject matter jurisdiction -- The responsibility of an agent shall be enforcement of this Chapter and Chapters 78C and 78D of the General Statutes.

b. Territorial jurisdiction -- A securities law enforcement agent is a State officer with jurisdiction throughout the State.

c. Service of orders of the Administrator -- Securities law enforcement agents may serve and execute notices, orders, or demands issued by the Administrator for the surrender of registrations or relating to any administrative proceeding. While serving and executing such notices, orders, or demands, securities law enforcement agents shall have all the power and authority possessed by a law enforcement officer."

Sec. 3. G.S. 78A-47(a) reads as rewritten:

"(a) Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this Chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition to any other remedies provided by this Chapter, the Administrator may apply to the court hearing this matter for an order of restitution whereby the defendant in such action shall be ordered to make restitution of those sums shown by the Administrator to have been obtained by him in violation of any of the provisions of this Chapter. Such restitution shall be payable, in the discretion of the court, to the Administrator or receiver appointed pursuant to this section for the benefit of those persons whose assets were obtained in violation of this Chapter, or directly to those persons. The court may not require the Administrator to post a bond."

Sec. 4. G.S. 78A-47 is amended by adding a new subsection to read:

"(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

Any civil penalty or reimbursement imposed under this subsection shall be paid into the General Fund. No order under this subsection may be entered without prior notice and an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

Sec. 5. G.S. 78A-56 reads as rewritten:

"§ *78A-56. Civil liabilities.*

(a) Any person who:

(1) Offers or sells a security in violation of G.S. 78A-8(1), 78A-8(3), 78A-10(b), 78A-12, 78A-24, or 78A-36(a), or of any rule or order under G.S. 78A-49(d) which requires the affirmative approval of sales literature before it is used, or of any condition imposed under G.S. 78A-27(d) or 78A-28(g), or

(2) Offers or sells a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading (the purchaser not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and ~~did not act in reckless disregard,~~ in the exercise of reasonable care could not have known, of the untruth or omission,

is liable to the person purchasing the security from him, who may sue either at law or in equity to recover the consideration paid for the security, together with interest at the legal rate from the date of payment, costs, and reasonable attorneys' fees, less the amount of any income received on the security, upon the tender of the security, or for damages if he no longer owns the security. Damages are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it and interest at the legal rate as provided by G.S. 24-1 from the date of disposition.

(b) Any person who purchases a security by means of any untrue statement of a material fact or any omission to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading (the seller not knowing of the untruth or omission), and who does not sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the untruth or omission, shall be liable to the person selling the security to him, who may sue either at law or in equity to recover the security, plus any income received by the purchaser thereon, upon tender of the consideration received, or for damages if the purchaser no longer owns the security. Damages are the excess of the value of the security when the

purchaser disposed of it, plus interest at the legal rate from the date of disposition, over the consideration paid for the security.

(c) Every person who directly or indirectly controls a person liable under subsection (a) or (b), every partner, officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee of such a person who materially aids in the act or transaction, and every dealer or salesman who materially aids in the sale are also liable jointly and severally with and to the same extent as such person, unless the person who is so liable sustains the burden of proof that he did not know, and ~~did not act in reckless disregard,~~ in the exercise of reasonable care should not have known, of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable.

(d) Any tender specified in this section may be made at any time before entry of judgment. Tender shall require only notice of willingness to exchange the security for the amount specified. Any notice may be given by service as in civil actions or by certified mail addressed to the last known address of the person liable.

(e) Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

(f) No person may sue under this section more than two years after the sale or contract of sale.

(g) (1) No purchaser may sue under this section if, before suit is commenced, the purchaser has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the purchaser of his rights; offering to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate as provided by G.S. 24-1 from the date of payment, less the amount of any income received on the security or, if the purchaser no longer owns the security, offering to pay the purchaser upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection (a); and stating that the offer may be accepted by the purchaser at any time within 30 days of its receipt; and the purchaser has failed to accept such offer in writing within the specified period.

(2) No seller may sue under this section if, before suit is commenced, the seller has received a written offer stating the respect in which liability under this section may have arisen and fairly advising the seller of his rights; offering to return the security plus the amount of any income

received thereon upon payment of the consideration received, or, if the purchaser no longer owns the security, offering to pay the seller upon acceptance of the offer an amount in cash equal to the damages computed in accordance with subsection (b); and providing that the offer may be accepted by the seller at any time within 30 days of its receipt; and the seller has failed to accept such offer in writing within the specified period.

(3) Offers shall be in the form and contain the information the Administrator by rule prescribes. Every offer under subsection (g) shall be delivered to the offeree or sent by certified mail addressed to him at his last known address. If an offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subsection.

(h) No person who has made or engaged in the performance of any contract in violation of any provision of this Chapter or any rule or order hereunder, or who has acquired any purported right under any such contract with knowledge of the facts by reason of which its making or performance was in violation, may base any suit on the contract.

(i) Any condition, stipulation, or provision binding any person acquiring any security to waive compliance with any provision of this Chapter or any rule or order hereunder is void.

(j) The rights and remedies provided by this Chapter are in addition to any other rights or remedies that may exist at law or in equity, but this Chapter does not create any cause of action not specified in this section or G.S. 78A-37(d)."

Sec. 6. G.S. 78A-57 reads as rewritten:

"§ *78A-57. Criminal penalties.*

(a) Any person who willfully violates any provision of this Chapter except G.S. 78A-8, 78A-9, 78A-11, or 78A-12, or who willfully violates any rule or order under this Chapter, or who willfully violates G.S. 78A-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon; but no person may be imprisoned for the violation of any rule or order if he proves that he had no knowledge of the rule or order. Any person who willfully violates G.S. 78A-8, 78A-11, or 78A-12 shall, upon conviction be punished as a Class H felon.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to ~~the Attorney General or~~ the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of such

reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of such violation or violations on behalf of the State. Upon approval of the Administrator, such employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of such violations without receiving compensation from the district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

Sec. 7. G.S. 78C-28 reads as rewritten:

"*§ 78C-28. Injunctions; cease and desist ~~orders.~~ orders; civil penalties.*

(a) Whenever it appears to the Administrator that any person has engaged or is about to engage in any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may in his discretion bring an action in any court of competent jurisdiction to enjoin the acts or practices and to enforce compliance with this Chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or *writ of mandamus* shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. In addition to any other remedies provided by this Chapter, the Administrator may apply to the court hearing this matter for an order of restitution whereby the defendant in such action shall be ordered to make restitution of those sums shown by the Administrator to have been obtained by him in violation of any of the provisions of this Chapter. Such restitution shall be payable, in the discretion of the court, to the Administrator or receiver appointed pursuant to this section for the benefit of those persons whose assets were obtained in violation of this Chapter, or directly to those persons. The court may not require the Administrator to post a bond.

(b) (1) If the Administrator determines after giving notice of an opportunity for a hearing, that any person has engaged in, or is about to engage in, any act or practice constituting a violation of any provision of this Chapter or any rule or order hereunder, he may order such person to cease and desist from such unlawful act or practice and take such affirmative action as in the judgment of the Administrator will carry out the purposes of this Chapter.

(2) If the Administrator makes written findings of fact that the public interest will be irreparably harmed by delay in

issuing an order under G.S. 78C-28(b)(1), the Administrator may issue a temporary cease and desist order. Upon the entry of a temporary cease and desist order, the Administrator shall promptly notify in writing the person subject to the order that such order has been entered, the reasons therefor, and that within 20 days after the receipt of a written request from such person the matter shall be set down for hearing to determine whether or not the order shall become permanent and final. If no hearing is requested and none is ordered by the Administrator, the order shall remain in effect until it is modified or vacated by the Administrator. If a hearing is requested or ordered, the Administrator, after giving notice of an opportunity for a hearing to the person subject to the order, shall by written findings of fact and conclusion of law, vacate, modify, or make permanent the order.

(3) No order under subsection (b) of this section, except an order issued pursuant to G.S. 78C-28(b)(2), may be entered without prior notice or an opportunity for hearing. The Administrator may vacate or modify an order under subsection (b) of this section upon his finding that the conditions which required such an order have changed and that it is in the public interest to so vacate or modify.

(4) A final order issued pursuant to the provisions of subsection (b) of this section shall be subject to review as provided in G.S. 78C-29.

(c) The Administrator may issue an order against an applicant, registered person, or other person who willfully violates this Chapter or a rule or order of the Administrator under this Chapter:

(1) Imposing a civil penalty of up to two thousand five hundred dollars ($2,500) for a single violation or of up to twenty-five thousand dollars ($25,000) for multiple violations in a single proceeding or a series of related proceedings; and

(2) Requiring reimbursement of the costs of investigation.

Any civil penalty or reimbursement imposed under this subsection shall be paid into the General Fund. No order authorized by this subsection may be entered without prior notice of an opportunity for a hearing conducted pursuant to Article 3 of Chapter 150B of the General Statutes."

Sec. 8. G.S. 78C-38(b) reads as rewritten:

"(b) Every person who directly or indirectly controls a person liable under subsection (a) of this section, including every partner,

officer, or director of such a person, every person occupying a similar status or performing similar functions, every employee or associate of such a person who materially aids in the conduct giving rise to the liability, and every dealer or salesman who materially aids in such conduct is liable jointly and severally with and to the same extent as such person, unless able to sustain the burden of proof that he did not know, and ~~did not act in reckless disregard~~ in the exercise of reasonable care should not have known of the existence of the facts by reason of which the liability is alleged to exist. There is contribution as in cases of contract among the several persons so liable and as provided among tort-feasors pursuant to Chapter 1B of the General Statutes."

Sec. 9. G.S. 78C-39 reads as rewritten:

"*§ 78C-39. Criminal penalties.*

(a) Any person who willfully violates any provision of this Chapter except G.S. 78C-8(a)(1), 78C-8(a)(2), 78C-8(b), or 78C-9 or who willfully violates G.S. 78C-9 knowing the statement made to be false or misleading in any material respect, shall upon conviction be punished as a Class I felon. Any person who willfully violates G.S. 78C-8(a)(1), 78C-8(a)(2), or 78C-8(b) shall, upon conviction, be punished as a Class H felon.

(b) The Administrator may refer such evidence as is available concerning violations of this Chapter or of any rule or order hereunder to ~~the Attorney General or~~ the proper district attorney, who may, with or without such a reference, institute the appropriate criminal proceedings under this Chapter. Upon receipt of such reference, the district attorney may request that a duly employed attorney of the Administrator prosecute or assist in the prosecution of such violation or violations on behalf of the State. Upon approval of the Administrator, such employee may be appointed a special prosecutor for the district attorney to prosecute or assist in the prosecution of such violations without receiving compensation from the district attorney. Such special prosecutor shall have all the powers and duties prescribed by law for district attorneys and such other powers and duties as are lawfully delegated to such special prosecutor by the district attorney for violations of this Chapter.

(c) Nothing in this Chapter limits the power of the State to punish any person for any conduct which constitutes a crime by statute or at common law."

Sec. 10. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 316 **CHAPTER 457**

AN ACT TO INCREASE FEES CHARGED BY THE BOARD OF PODIATRY EXAMINERS, TO PROVIDE FOR TEMPORARY PODIATRY LICENSES, AND TO REVISE PROVISIONS FOR APPLICANTS LICENSED IN OTHER STATES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-202.5 reads as rewritten:

"§ *90-202.5. Applicants to be examined; examination fee; ~~requirements.~~ requirements; temporary licenses.*

(a) Any person not heretofore authorized to practice podiatry in this State shall file with the Board of Podiatry Examiners an application for examination accompanied by a fee not to exceed ~~two hundred dollars ($200.00),~~ three hundred fifty dollars ($350.00), together with proof that the applicant is of good moral character, and has obtained a preliminary education equivalent to four years of instruction in a high school and ~~two~~ three years of instruction in a college or university approved by the American Association of Colleges and Universities. ~~Such applicant before presenting himself for examination must be a graduate of a college of podiatric medicine accredited by the National Council on Education of [the] American Podiatry Association.~~ Before taking the examination, the applicant must be a graduate of a college of podiatric medicine accredited by the National Council on Education of the American Podiatry Association.

Effective January 1, 1992, every applicant, as a prerequisite for licensure under this Article, shall complete one year of clinical residency or other equivalent postgraduate clinical program approved by the North Carolina Board of Podiatry Examiners and, before taking the North Carolina podiatry licensure examination, shall present evidence to the Board that he has passed the National Board Examination.

Any person licensed to practice podiatry on or before January 1, 1992, who is actively involved in a postgraduate clinical program approved by the Board shall be permitted to practice podiatry in the approved program pending its completion.

(b) Effective January 1, 1992, the Board may issue a temporary license to practice podiatry to any applicant for licensure, for a period and under conditions established by the Board, while the person resides in North Carolina and is participating in a clinical residency or other equivalent postgraduate clinical program approved by the Board. A temporary license is valid only while the licensee is actively participating in the program and may not be extended beyond the determined length of training set by the Board."

Sec. 2. G.S. 90-202.6(c) reads as rewritten:

"(c) Any applicant who fails to pass his examination shall within one year be entitled to reexamination upon the payment of an amount not to exceed ~~two hundred dollars ($200.00),~~ three hundred fifty dollars ($350.00), but not more than two reexaminations shall be allowed any one applicant prior to filing a new application. Should he fail to pass his third examination, he shall file a new application before he can again be examined."

Sec. 3. G.S. 90-202.7 reads as rewritten:

"§ *90-202.7. Applicants licensed in other states.*

If an applicant for licensure is already licensed in another state to practice podiatry, the Board shall issue a license to practice podiatry to the applicant upon evidence that:

(1) The applicant is currently an active, competent practitioner in good standing; and

(2) The applicant has practiced at least ~~three years out of the~~ five years immediately preceding his or her ~~application; and~~ application with at least three of those five years being in a state that grants similar reciprocity to North Carolina podiatrists; and

(3) The applicant currently holds a valid license in another state; and

(4) No disciplinary proceeding or unresolved complaint is pending anywhere at the time a license is to be issued by this State; and

(5) The licensure requirements in the other state are equivalent to or higher than those required by this State, and the licensure requirements of that other state grant similar reciprocity to podiatrists licensed in North Carolina.

Any license issued upon the application of any podiatrist from any other state shall be subject to all of the provisions of this Article with reference to the license issued by the North Carolina State Board of Podiatry Examiners upon examination of applicants, and the rights and privileges to practice the profession of podiatry under any license so issued shall be subject to the same duties, obligations, restrictions and conditions as imposed by this Article on podiatrists originally examined by the North Carolina State Board of Podiatry Examiners."

Sec. 4. G.S. 90-202.10 reads as rewritten:

"§ *90-202.10. Annual fee; cancellation or renewal of license.*

On or before the first day of July of each year every podiatrist engaged in the practice of podiatry in this State shall transmit to the secretary-treasurer of the said North Carolina State Board of Podiatry Examiners his signature and post-office address, the date and year of his or her certificate, together with a fee to be set by the Board of

Podiatry Examiners not to exceed ~~one hundred fifty dollars ($150.00)~~ two hundred dollars ($200.00) and receive therefor a renewal certificate. Any license or certificate granted by said Board under or by virtue of this section shall automatically be cancelled and annulled if the holder thereof fails to secure the renewal herein provided for within a period of 30 days after the first day of July of each year, and such delinquent podiatrist shall pay a penalty for reinstatement of twenty-five dollars ($25.00) for each succeeding month of delinquency until a six-month period of delinquency exists. After a six-month period of delinquency exists or after January 1 following the July 1 deadline, the said podiatrist must appear before the North Carolina Board of Podiatry Examiners and take a new examination before being allowed to practice podiatry in the State of North Carolina."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 320 **CHAPTER 458**

AN ACT TO MAKE TECHNICAL CHANGES TO THE EMPLOYMENT SECURITY LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-8 is amended by adding the following new subdivision to read:

"(26) If two or more related corporations concurrently employ the same individual and compensate the individual through a common paymaster that is one of the related corporations, each related corporation shall be considered to have paid as remuneration to the individual only the amounts actually disbursed by it to the individual and shall not be considered to have paid as remuneration to the individual amounts actually disbursed to the individual by another of the related corporations."

Sec. 2. G.S. 96-9(a) is amended by adding the following new subdivision to read:

"(7) Effective with the quarter ending September 30, 1992, every employer with 250 or more employees, and every person or organization that, as agent, reports wages on a total of 250 or more employees on behalf of one or more subject employers, shall file that portion of the 'Employer's Quarterly Tax and Wage Report' that contains the name, social security number, and gross wages of each individual

in employment on magnetic tapes or diskettes in a format prescribed by the Commission."

Sec. 3. G.S. 96-9(c)(2) reads as rewritten:

"(2) Charging of benefit payments. --

a. Benefits paid shall be allocated to the account of each base period employer in the proportion that the base period wages paid to an eligible individual in any calendar quarter by each such employer bears to the total wages paid by all base period employers during the base period, except as hereinafter provided in paragraphs b, c, and d of this subdivision, G.S. 96-9(d)(2)c, and 96-12(e)G. The amount so allocated shall be multiplied by one hundred twenty percent (120%) and charged to that employer's account. Benefits paid shall be charged to employers' accounts upon the basis of benefits paid to claimants whose benefit years have expired.

b. Any benefits paid to any claimant under a claim filed for a period occurring after the date of such separations as are set forth in this paragraph and based on wages paid prior to the date of (i) the leaving of work by the claimant without good cause attributable to the employer; (ii) the discharge of claimant for misconduct in connection with his work; (iii) the discharge of the claimant for substantial fault as that term may be defined in G.S. 96-14; (iv) the discharge of the claimant solely for a bona fide inability to do the work for which he was hired but only where the claimant was hired pursuant to a job order placed with a local office of the Commission for referrals to probationary employment (with a probationary period no longer than 100 days), which job order was placed in such circumstances and which satisfies such conditions as the Commission may by regulation prescribe and only to the extent of the wages paid during such probationary employment; (v) separations made disqualifying under G.S. 96-14(2B) and (6A); or (vi) separation due to leaving for disability or health condition shall not be charged to the account of the employer by whom the claimant was employed at the time of such separation; provided, however, said employer promptly furnishes the Commission with such notices regarding any separation of the individual from work as are or may be required by the regulations of the Commission.

No benefit charges shall be made to the account of any employer who has furnished work to an individual who, because of the loss of employment with one or more other employers, becomes eligible for partial benefits while still being furnished work by such employer on substantially the same basis and substantially the same amount as had been made available to such individual during his base period whether the employments were simultaneous or successive; provided, that such employer makes a written request for noncharging of benefits in accordance with Commission regulations and procedures.

No benefit charges shall be made to the account of any employer where benefits are paid as a result of a decision by an Adjudicator, Appeals Referee or the Commission if such decision to pay benefits is ultimately reversed; nor shall any such benefits paid be deemed to constitute an overpayment under G.S. 96-18(g)(2), the provisions thereof notwithstanding. Provided, an overpayment of benefits paid shall be established in order to provide for the waiting period required by G.S. 96-13(c).

c. Any benefits paid to any claimant who is attending a vocational school or training program as provided in G.S. 96-13(a)(3) shall not be charged to the account of the base period employer(s).

d. Any benefits paid to any claimant under the following conditions shall not be charged to the account of the base period employer(s):
   1. The benefits are paid for unemployment due directly to a major natural disaster, and
   2. The President has declared the disaster pursuant to the Disaster Relief Act of 1970, 42 USCA 4401, **et seq.**, and
   3. The benefits are paid to claimants who would have been eligible for disaster unemployment assistance under this Act, if they had not received unemployment insurance benefits with respect to that unemployment.

e. 1. Any benefits paid to any claimant which are based on previously uncovered employment which are reimbursable by the federal government shall not be

charged to the experience rating account of any employer.

2. For purposes of this paragraph previously uncovered employment for which benefits are reimbursable by the federal government means services performed before July 1, 1978, in the case of a week of unemployment beginning before July 1, 1978, or before January 1, 1978, in the case of a week of unemployment beginning after July 1, 1978, and to the extent that assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974 (SUA) was not paid to such individuals on the basis of such service."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 343 **CHAPTER 459**

AN ACT AMENDING THE ALCOHOLIC BEVERAGE CONTROL LAWS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-301(b) reads as rewritten:

"(b) Possession on Other Property. -- It shall be lawful, without an ABC permit, for a person to possess for his personal use and the use of his guests not more than ~~four~~ five liters of fortified wine or spirituous liquor, or ~~four~~ five liters of the two combined, at the following places:

(1) The residence of any other person with that person's consent;

(2) Any other property not primarily used for commercial purposes and not open to the public at the time the alcoholic beverage is possessed, if the owner or other person in charge of the property consents to that possession and consumption;

(3) An establishment with a brown-bagging permit as defined in G.S. 18B-1001(7)."

Sec. 2. G.S. 18B-702 is amended by adding a new subsection to read:

"(f) Applicability of Criminal Statutes. -- The provisions of G.S. 14-90 and G.S. 14-254 shall apply to any person appointed to or employed by a local board, and any person convicted of a violation of G.S. 14-90 or G.S. 14-254 shall be punished as a Class H felon."

Sec. 3. G.S. 18B-805(e) reads as rewritten:

"(e) Other Distributions. -- After making the distributions provided in subsections (b), (c), and (d), the local board shall pay each quarter the remaining gross receipts to the general fund of the city or county for which the board is established, unless some other distribution or some other schedule is provided for by law. If the governing body of each city and county receiving revenue from an ABC system agrees, ~~and if the Commission approves,~~ those governing bodies may alter at any time the distribution to be made under this ~~subsection.~~ subsection or under any local act. Copies of the governing body resolutions agreeing to a new distribution formula and a copy of the approved new distribution formula shall be submitted to the Commission for review and audit purposes. If any one of the governing bodies later withdraws its consent to the change in distribution, profits shall be distributed according to the original formula, beginning with the next quarter."

Sec. 4. G.S. 18B-904 is amended by adding a new subsection to read:

"(f) Local Government Objections. -- In any hearing in which the suitability of a location or applicant is an issue, a local government official may be designated by the local governing authority to make recommendations pursuant to G.S. 18B-901(b) and may testify at the hearing without further qualification or authorization."

Sec. 5. G.S. 18B-1001(5) reads as rewritten:

"(5) On-Premises Fortified Wine Permit. -- An on-premises fortified wine permit authorizes the retail sale of fortified wine for consumption on the premises, either alone or mixed with other beverages, and the retail sale of fortified wine in the manufacturer's original container for consumption off the premises. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theatres;
e. ~~Winery.~~ Wineries;
f. Convention centers."

Sec. 6. G.S. 18B-1001(7) reads as rewritten:

"(7) Brown-bagging Permit. -- A brown-bagging permit authorizes each individual patron of an establishment, with the permission of the permittee, to bring up to ~~four~~ five liters of fortified wine or spirituous liquor, or ~~four~~ five liters of the two combined, onto the premises and to

consume those alcoholic beverages on the premises. The permit may be issued for any of the following:

a. Restaurants;
b. Hotels;
c. Private clubs;
d. Community theaters;
e. Congressionally-chartered veterans organizations."

Sec. 7. G.S. 18B-1006(b) reads as rewritten:

"(b) Lockers at Clubs. -- A private club or congressionally-chartered veterans organization which has been issued a brown-bagging permit may, but is not required to, provide lockers for its members to store their alcoholic beverages. If lockers are provided, however, they shall not be shared but shall be for individual members. Each locker and each bottle of alcoholic beverages on the premises shall be labelled with the name of the member to whom it belongs. No more than ~~four~~ five liters each of malt beverages or unfortified wine may be stored by a member at one time. No more than ~~four~~ five liters of either fortified wine or spirituous liquor, or ~~four~~ five liters of the two combined, may be stored by a member at one time."

Sec. 8. G.S. 18B-1109(a) reads as rewritten:

"(a) Authorization. -- The holder of a malt beverages wholesaler permit may:

(1) Receive, possess and transport shipments of malt beverages;
(2) Sell, deliver and ship, in closed containers and in quantities of one case or container or more, malt beverages of any brand filed pursuant to ~~subsection (b),~~ G.S. 18B-1303(a), to wholesalers or retailers licensed under this Chapter, as authorized by the ABC laws;
(3) Furnish and sell malt beverages filed pursuant to ~~subsection (b)~~ G.S. 18B-1303(a) to its employees subject to the rules of the Commission and the Department of Revenue;
(4) In locations where the sale is legal, furnish malt beverages of any brand filed pursuant to ~~subsection (b)~~ G.S. 18B-1303(a) to guests and any other person who does not hold an ABC permit, for promotional purposes, subject to the rules of the Commission."

Sec. 9. G.S. 18B-1303(a) reads as rewritten:

"(a) Filing. -- It is unlawful for a supplier to provide malt beverages to a wholesaler unless a distribution agreement has been filed with the Commission describing the brands of the supplier which the wholesaler is authorized to sell and the territory in which such sales may take place. If the supplier sells several brands, the agreement need not apply to all brands. No supplier may provide by a

distribution agreement for the distribution of a brand to more than one wholesaler for the same territory. A wholesaler shall not distribute any brand of malt beverage to a retailer whose premises are located outside the territory specified in the wholesaler's distribution agreement for that brand. A wholesaler may, however, with the approval of the Commission distribute malt beverages outside his designated territory during periods of temporary service interruption when requested to do so by the supplier and the wholesaler whose service is interrupted."

Sec. 10. G.S. 18B-404(d) reads as rewritten:

"(d) Size of Bottles. -- A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of ~~750~~ 375 milliliter or larger containers."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 396 **CHAPTER 460**

AN ACT GOVERNING THE VOTING OF SHARES OF CORPORATE STOCK OR OTHER SECURITIES BY JOINT PERSONAL REPRESENTATIVES AND COTRUSTEES AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-13-6(d) reads as rewritten:

"(d) ~~The voting of corporate shares of stock is governed by the provisions of G.S. 55-69(f).~~ Subject to subsection (b) of this section, if two or more personal representatives own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, his act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately."

Sec. 2. G.S. 36A-69 reads as rewritten:

"*§ 36A-69. Voting stock.*

A trustee owning shares of corporate stock or other securities may vote ~~it~~ them in person or by general or limited proxy, and may execute waivers, consents or objections with respect to such stock or

securities, but shall be liable for any loss resulting to the beneficiaries from a failure to use reasonable care in deciding how to vote the stock or securities, in voting ~~it~~ them or in not voting ~~it~~ them."

Sec. 3. G.S. 28A-13-3(a)(8) reads as rewritten:

"(8) To vote shares of stock or other securities in person or by general or limited proxy, and to execute waivers, consents or objections with respect to such stock or securities."

Sec. 4. G.S. 36A-73(c) reads as rewritten:

"(c) ~~The voting of corporate shares of stock by cotrustees is governed by G.S. 55-69(f).~~ Subject to subsection (a) of this section, if two or more trustees own shares of corporate stock or other securities, their acts with respect to voting shall have the following effect:

(1) If only one votes, in person or by proxy, his act binds all;

(2) If more than one vote, in person or by proxy, the act of the majority so voting binds all;

(3) If more than one vote, in person or by proxy, but the vote is evenly split on any particular matter, each faction is entitled to vote the stock or other securities in question proportionately."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 400 **CHAPTER 461**

AN ACT TO PROVIDE THAT THE DEPARTMENT OF CULTURAL RESOURCES SHALL ISSUE ARCHAEOLOGICAL PERMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 70-13 reads as rewritten:

"§ *70-13. Archaeological investigations.*

(a) Any person may apply to the Department of ~~Administration~~ Cultural Resources for a permit to conduct archaeological investigations on State lands. The application shall contain information the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, deems necessary, including the time, scope, location and specific purpose of the proposed work.

(b) A permit shall be issued pursuant to an application under subsection (a) of this section if, after any notifications and consultations required by subsection (d) of this section, the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, finds that:

(1) The applicant is qualified to carry out the permitted activity;
(2) The proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;
(3) The currently available technology and the technology the applicant proposes to use are such that the significant information contained in the archaeological resource can be retrieved;
(4) The funds and the time the applicant proposes to commit are such that the significant information contained in the archaeological resources can be retrieved;
(5) The archaeological resources which are collected, excavated or removed from State lands and associated records and data will remain the property of the State of North Carolina and the resources and copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution;
(6) The activity pursuant to the permit is not inconsistent with any management plan applicable to the State lands concerned; and
(7) The applicant shall bear the financial responsibility for the reinterment of any human burials or human skeletal remains excavated or removed as a result of the permitted activities.

(c) A permit may contain any terms, conditions or limitations the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, deems necessary to achieve the intent of this Article. A permit shall identify the person responsible for carrying out the archaeological investigation.

(d) If a permit issued under G.S. 70-13(a) may result in harm to, or destruction of, any religious or cultural site, as determined by the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, before issuing such permit, the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, shall notify and consult with, insofar as possible, a local representative of an appropriate religious or cultural group. If the religious or cultural site pertains to Native Americans, the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, shall notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director of the North Carolina Commission of Indian Affairs shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community. Such notification shall include, but not be limited to, the following:

(1) The location and schedule of the forthcoming investigation;
(2) Background data concerning the nature of the study; and
(3) The purpose of the investigation and the expected results.

(e) A permit issued under G.S. 70-13 may be suspended by the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, upon the determination that the permit holder has violated any provision of G.S. 70-15(a) or G.S. 70-15(b). A permit may be revoked by the Department of ~~Administration,~~ Cultural Resources, in consultation with the Department of ~~Cultural Resources,~~ Administration, upon assessment of a civil penalty under G.S. 70-16 against the permit holder or upon the permit holder's conviction under G.S. 70-15."

Sec. 2. Chapter 70 of the General Statutes is amended by adding a new Article to read:

"*ARTICLE 4.*

"*North Carolina Archaeological Record Program.*

"*§ 70-46. Short title.*

This Article shall be known as "The North Carolina Archaeological Record Program".

"*§ 70-47. Findings and purpose.*

(a) The General Assembly finds that archaeological resources on private lands constitute the majority of the irreplaceable historic and prehistoric resources of the State. These resources are increasingly endangered and existing State laws do not provide private landowners with the means adequately to preserve these resources. There is currently no provision for assisting and giving recognition to a private landowner who wishes to preserve the archaeological resources located on the owner's property.

(b) The purpose of this Article is to preserve and protect for the present and future benefit of the people of North Carolina through a program of voluntary site enrollment the prehistoric and historic archaeological resources that are on private lands.

"*§ 70-48. Definitions.*

As used in this Article, unless the context clearly indicates otherwise:

(1) 'Archaeological investigation' means any surface collection, subsurface tests, excavation, or other activity that results in the disturbance or removal of archaeological resources.

(2) 'Archaeological resource' means any material remains of past human life or activities which are at least 50 years old and which are of archaeological interest, including pieces of pottery, basketry, bottles, weapons, weapon projectiles, tools, structures or portions of structures, rock paintings, rock carvings, intaglios, graves or human skeletal materials.

Paleontological specimens are not to be considered archaeological resources unless found in an archaeological context.

(3) 'Program' means the North Carolina Archaeological Record Program established under this Article.

(4) 'Record' means the North Carolina Archaeological Record established under this Article.

(5) 'State Archaeologist' means the head of the Office of State Archaeology, Division of Archives and History, Department of Cultural Resources.

"§ 70-49. *The North Carolina Archaeological Record Program.*

(a) The Department of Cultural Resources, Division of Archives and History shall establish the North Carolina Archaeological Record Program. The purpose of the Program shall be to assist private owners of archaeological resources in the preservation and protection of those resources. Participation in the Program shall be voluntary.

(b) As part of the Program, the Department shall establish and maintain the North Carolina Archaeological Record. The North Carolina Archaeological Record shall include a list of the archaeological resources owned privately by each person participating in the Program. No archaeological resource shall be enrolled in the Record without the permission of its owner.

(c) An archaeological resource that is enrolled in the North Carolina Archaeological Record shall be removed from the Record at the written request of either the State Archaeologist or the owner of the archaeological resource. The archaeological resource shall be removed from the Record 30 days after the receipt by the Department of Cultural Resources of the written request.

"§ 70-50. *Site Steward Program.*

The Department of Cultural Resources may create and maintain a volunteer program for purposes of monitoring the condition of archaeological resources listed in the Record. This program shall be known as the Site Steward Program and will be administered through the Office of State Archaeology in cooperation with local and statewide archaeological societies and groups.

"§ 70-51. *Archaeological investigations.*

(a) Any person wanting to conduct an archaeological investigation on private land that is the site of an archaeological resource enrolled in the Record shall apply to the Department of Cultural Resources for a permit to conduct such an investigation. The application shall contain information the Department of Cultural Resources deems necessary, including the time, scope, location and specific purpose of the proposed work.

(b) A permit shall be issued pursuant to this section if, after any notifications and consultations required by subsection (d) of this section, the Department of Cultural Resources finds that:

(1) The applicant is qualified to carry out the permitted activity;

(2) The proposed activity is undertaken for the purpose of furthering archaeological knowledge in the public interest;

(3) The currently available technology and the technology the applicant proposes to use are such that the significant information contained in the archaeological resource can be retrieved;

(4) The funds and the time the applicant proposes to commit are such that the significant information contained in the archaeological resources can be retrieved;

(5) The archaeological resources that are enrolled in the Record and that are collected, excavated or removed from the privately owned site and the associated records and data will remain the property of the private owner of the archaeological resource;

(6) Copies of associated archaeological records and data will be preserved by a suitable university, museum, or other scientific or educational institution;

(7) The applicant shall bear the financial responsibility for the reinterment of any human burials or human skeletal remains excavated or removed as a result of the permitted activities; and

(8) The applicant has obtained the permission of the owner of the archaeological resource to conduct the archaeological investigation.

(c) A permit may contain any terms, conditions or limitations the Department of Cultural Resources deems necessary to achieve the intent of this Article. A permit shall identify the person responsible for carrying out the archaeological investigation.

(d) If the Department of Cultural Resources determines that a permit issued under this section may result in harm to, or destruction of, any religious or cultural site, the Department of Cultural Resources, before issuing the permit, shall notify and consult with, insofar as possible, a local representative of an appropriate religious or cultural group. If the religious or cultural site pertains to Native Americans, the Department of Cultural Resources shall notify the Executive Director of the North Carolina Commission of Indian Affairs. The Executive Director of the North Carolina Commission of Indian Affairs shall notify and consult with the Eastern Band of Cherokee or other appropriate tribal group or community. Such notification shall include, but not be limited to, the following:

(1) The location and schedule of the forthcoming investigation;
(2) Background data concerning the nature of the study; and
(3) The purpose of the investigation and the expected results.

(e) A permit issued under this section may be suspended by the Department of Cultural Resources upon the determination that the permit holder has violated any condition of the permit.

"*§ 70-52. Rule-making authority.*

The Department of Cultural Resources may adopt rules to implement this Article."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 204 **CHAPTER 462**

AN ACT TO REQUIRE THE SOCIAL SERVICES COMMISSION TO ADOPT RULES PERTAINING TO THE EDUCATION REQUIREMENTS FOR DOMICILIARY HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-153 reads as rewritten:

"*§ 143B-153. Social Services Commission -- creation, powers and duties.*

There is hereby created the Social Services Commission of the Department of Human Resources with the power and duty to adopt rules and regulations to be followed in the conduct of the State's social service programs with the power and duty to adopt, amend, and rescind rules and regulations under and not inconsistent with the laws of the State necessary to carry out the provisions and purposes of this Article. Provided, however, the Department of Human Resources shall have the power and duty to adopt rules and regulations to be followed in the conduct of the State's medical assistance program.

(1) The Social Services Commission is authorized and empowered to adopt such rules and regulations that may be necessary and desirable for the programs administered by the Department of Human Resources as provided in Chapter 108A of the General Statutes of the State of North Carolina.
(2) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:
    a. For the programs of public assistance established by federal legislation and by Article 2 of Chapter 108A of the General Statutes of the State of North Carolina with

the exception of the program of medical assistance established by G.S. 108A-25(b);

b. To achieve maximum cooperation with other agencies of the State and with agencies of other states and of the federal government in rendering services to strengthen and maintain family life and to help recipients of public assistance obtain self-support and self-care;

c. For the placement and supervision of dependent and delinquent children and payment of necessary costs of foster home care for needy and homeless children as provided by G.S. 108A-48; and

d. For the payment of grants-in-aid and other State funds to private child-caring institutions. The payment and distribution of grants-in-aid funds to private child-caring institutions shall be regulated by the grant-in-aid (GIA) formula. This formula and any modifications of this formula shall be approved by the Advisory Budget Commission prior to its implementation.

(2a) The Social Services Commission shall have the power and duty to establish standards and adopt rules and regulations:

a. For social services programs established by federal legislation and by Article 3 of G.S. Chapter 108A;

b. For implementation of Title XX of the Social Security Act, except for Title XX services provided solely through the Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services, by promulgating rules and regulations in the following areas:

1. Eligibility for all services established under a Comprehensive Annual Services Plan, as required by federal law;
2. Standards to implement all services established under the Comprehensive Annual Services Plan;
3. Maximum rates of payment for provision of social services;
4. Fees for services to be paid by recipients of social services;
5. Designation of certain mandated services, from among the services established by the Secretary below, which shall be provided in each county of the State; and
6. Title XX services for the blind, after consultation with the Commission for the Blind.

Provided, that the Secretary is authorized to promulgate all other rules in at least the following areas:

1. Establishment, identification, and definition of all services offered under the Comprehensive Annual Services Plan;
2. Policies governing the allocation, budgeting, and expenditures of funds administered by the Department;
3. Contracting for and purchasing services; and
4. Monitoring for effectiveness and compliance with State and federal law and regulations.

(3) The Social Services Commission shall have the power and duty to establish and adopt standards:

a. For the inspection and licensing of maternity homes as provided by G.S. 131D-1;

b. For the inspection and licensing of domiciliary homes for aged or disabled persons as provided by ~~G.S. 131D-2(b).~~ G.S. 131D-2(b) and for personnel requirements of staff employed in domiciliary homes. Any proposed personnel requirements that would impose additional costs on owners of domiciliary homes shall be reviewed by the Joint Legislative Commission on Governmental Operations before they are adopted.

c. For the inspection and licensing of child-care institutions as provided by G.S. 131D-10.5;

d. For the inspection and operation of jails or local confinement facilities as provided by G.S. 153A-220 and Article 2 of Chapter 131D of the General Statutes of the State of North Carolina;

e. Repealed by Session Laws 1981, c. 562, s. 7.

f. For the regulation and licensing of charitable organizations, professional fund-raising counsel and professional solicitors as provided by Chapter 131D of the General Statutes of the State of North Carolina.

(4) The Social Services Commission shall have the power and duty to authorize investigations of social problems, with authority to subpoena witnesses, administer oaths, and compel the production of necessary documents.

(5) The Social Services Commission shall have the power and duty to ratify reciprocal agreements with agencies in other states that are responsible for the administration of public assistance and child welfare programs to provide assistance and service to the residents and nonresidents of the State.

(6) The Commission is authorized and empowered to adopt such rules and regulations, not inconsistent with the laws of this State, as may be required by the federal government of grants-in-aid for social services purposes which may be made available for the State by the federal government. This section is to be liberally construed in order that the State and its citizens may benefit from such grants-in-aid.

(7) The Commission shall adopt rules and regulations consistent with the provisions of this Chapter. All rules and regulations not inconsistent with the provisions of this Chapter heretofore adopted by the Board of Social Services shall remain in full force and effect unless and until repealed or superseded by action of the Social Services Commission. All rules and regulations adopted by the Commission shall be enforced by the Department of Human Resources.

(8) The Commission may establish by regulation, except for Title XX services provided solely through the Division of Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Services, rates or fees for:

a. A fee schedule for the payment of the costs of necessary day care in licensed facilities and registered plans for minor children of needy families.

b. A fee schedule for the payment by recipients for services which are established in accordance with Title XX of the Social Security Act and implementing regulations; and

c. The payment of an administrative fee not to exceed two hundred dollars ($200.00) to be paid by public or nonprofit agencies which employ students under the Plan Assuring College Education (PACE) program.

d. Child support enforcement services as defined by G.S. 110-130.1."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 220 **CHAPTER 463**

AN ACT TO INCREASE MEDICAL EXAMINER'S FEES TO MEET INCREASED COSTS AND TO ASSESS THE FEES AGAINST THE COUNTY WHERE THE DEATH OR FATAL

INJURY OCCURRED IF THE DECEASED IS A RESIDENT OF THAT COUNTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-387 reads as rewritten:

"§ *130A-387. Fees.*

For each investigation and prompt filing of the required report, the medical examiner shall receive a fee paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~in an amount determined reasonable and appropriate by the Secretary, but shall not exceed fifty dollars ($50.00).~~ seventy-five dollars ($75.00)."

Sec. 2. G.S. 130A-389(a) reads as rewritten:

"(a) If, in the opinion of the medical examiner investigating the case or of the Chief Medical Examiner, it is advisable and in the public interest that an autopsy or other study be made; or, if an autopsy or other study is requested by the district attorney of the county or by any superior court judge, an autopsy or other study shall be made by the Chief Medical Examiner or by a competent pathologist designated by the Chief Medical Examiner. A complete autopsy report of findings and interpretations, prepared on forms designated for the purpose, shall be submitted promptly to the Chief Medical Examiner. Copies of the report shall be furnished the authorizing medical examiner, district attorney or superior court judge. A copy of the report shall be furnished to other persons upon request. A fee for the autopsy or other study shall be paid by the State. However, if the deceased is a resident of the county in which the death or fatal injury occurred, that county shall pay the fee. The fee shall be ~~in an amount determined reasonable and appropriate by the Secretary, but shall not exceed four hundred dollars ($400.00).~~ four hundred dollars ($400.00)."

Sec. 3. G.S. 130A-390(a) reads as rewritten:

"(a) In any case of death described in G.S. 130A-383 or 130A- 384 where the body is buried without investigation by a medical examiner as to the cause and manner of death or where sufficient cause develops for further investigation after a body is buried as determined by a county medical examiner or the Chief Medical Examiner, the Chief Medical Examiner shall authorize an investigation and send a report of the investigation with recommendations to the appropriate district attorney. The district attorney may forward the report to the superior court judge and petition for disinterment. The judge may order that the body be exhumed and that an autopsy be performed by the Chief Medical Examiner. A report of the autopsy and other pathological studies shall be delivered to the judge. The cost of the exhumation,

autopsy, transportation and disposition of the body shall be paid by the State. However, if the deceased is a resident of the county in which death or fatal injury occurred, that county shall pay the cost."

Sec. 4. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 278 **CHAPTER 464**

AN ACT TO AMEND THE CHARTER OF THE TOWN OF LONG BEACH TO ALLOW THE TOWN TO ASSESS BENEFITED PROPERTY FOR UNDERGROUNDING OF UTILITIES, AND FOR CONSTRUCTION OF PUBLIC STREETS BY NECESSITY.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 259 of the 1965 Session Laws, being a revision and consolidation of the Charter of the Town of Long Beach, is amended by adding a new Article to the Charter to read:

"ARTICLE X. SPECIAL ASSESSMENT PROVISIONS

"Section 10.1. *Assessments for Street Improvements; Petition Unnecessary.*

(a) In addition to any authority granted by general law, the Council may order street improvements and to assess the costs thereof against abutting property in accordance with the provisions of this Article.

(b) The Board of Commissioners may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes without the necessity of a petition, if the Board makes a finding of fact that the street improvement project does not exceed 2,500 linear feet, and that any of the following apply:

(1) The street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard and it is in the public interest to make such improvements; or

(2) It is in the public interest to connect two streets or portions of a street already improved; or

(3) It is in the public interest to widen a street, or part thereof, which is already improved.

Assessments for widening any street or portion of a street without a petition shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the Town, as applied to the particular street or part thereof.

(c) For the purpose of this Article, the term 'street improvement' shall include grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way and construction or reconstruction of curbs, gutters and street drainage facilities.

"Section 10.2. *Assessments for Sidewalk Improvements; Petition Unnecessary.* In addition to any authority granted by general law, the Board of Commissioners may, without the necessity of a petition, order sidewalk improvements or repairs according to standards and specifications of the Town, and assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes provided that regardless of the assessment basis or bases employed, the Board of Commissioners may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

"Section 10.3. *Procedure; Effect of Assessment.* In ordering street and sidewalk improvements without a petition and assessing the costs thereof under authority of this Article, the Board of Commissioners shall comply with the procedures required by Article 10 of Chapter 160A of the General Statutes except those provisions relating to petitions of property owners and sufficiency thereof. The effect of the act of levying assessments under authority of this Article shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

"Section 10.4. *Special Assessment for Placement of Utilities Underground.* In addition to the authority provided in G.S. 160A-216, the Board of Commissioners may make special assessments against benefited property within the corporate limits of the Town for placing utility lines underground. For purposes of this section, utility lines include electrical distribution, telephone and cable television lines. Any assessments made under this section shall be made in accordance with the procedural requirements of Article 10 of Chapter 160A of the General Statutes."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 485 **CHAPTER 465**

AN ACT TO AUTHORIZE A NORTH CAROLINA INTERPRETER CLASSIFICATION SYSTEM APPLICATION AND ASSESSMENT FEE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 8B of the General Statutes is amended by adding a new section to read:

"*§ 8B-10. North Carolina Interpreter Classification System application and assessment fee.*

The Division of Services for the Deaf and the Hard of Hearing of the Department of Human Resources may charge an applicant for participation in the North Carolina Interpreter Classification System Program a fee of fifty dollars ($50.00). Ten dollars ($10.00) of this fee is an application fee and forty dollars ($40.00) of this fee is an assessment fee to cover the cost of administering the Program. The fee is payable when an applicant applies for participation in the Program."

Sec. 2. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 577 **CHAPTER 466**

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE VILLAGE OF PINEHURST.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the Village of Pinehurst are extended to include the following described area:

Beginning at an iron stake near the northeast corner of the Pinedale Subdivision, about 30 yards north of the Airport Road, (S.R. No. 1843), said iron stake being the most southeast corner of Lot No. 328 as shown on a plat entitled "Pinehurst Incorporated, Phase 2, Unit 17, Phase 5, Lots 301 thru 331", recorded in plat cabinet 4 at slide 235 in the Moore County Registry; running thence from the beginning N 81-09' W 30.6 feet to a concrete monument; thence as the south lines of Pinehurst Incorporated, Phase 2, Unit 17, N 80-14'W 4016.3 feet to a point in the west right of way of U.S. Highway No. 15-501, in the corporate limits of the Village of Pinehurst, North Carolina; thence as the corporate limits of the Village of Pinehurst, in a northerly direction, along the west right of way line of U.S. Highway No. 15-501 about 6010 feet to the east common corner of Lots 20 and 21 of Pinehurst, Incorporated, Phase 1, Unit 4; thence crossing U.S. Highway No. 15-501 in an easterly direction about 150 feet to the northwest corner of a 65.64 acre tract now or formerly owned by Pinehurst Resorts Company, Inc.; thence as the north line of the 65.64 acre tract N 69-49' 14"E 158.96 feet to the west common corner of Lots 36 and 37 of Pinehurst, Incorporated, replat of Phase 2, Unit 14; thence as the lines of the lots in the replat of

Phase 2, Unit 14, the following calls, N 10-33'W 76.43 feet to a corner; thence N 17-47'E 45.57 feet to a corner; thence N 60-07'E 35.35 feet to a corner; thence N 42-58' E 15.00 feet to a corner; thence N 2-38'E 92.99 feet to a corner; thence N 42.22'E 75.06 feet to a corner; thence N 35-01'E 79.48 feet to a corner; thence N54-36'E 61.92 feet to a corner; thence N 67-38'E 36.89 feet to a corner; thence N 76-25'E 122.8 feet to a corner; thence N60-46'E 60.29 feet to a corner in the line of Dr. Grier's property; thence as the line of the Grier Tract S 36-28'E 641.25 feet to a corner; thence continuing as the common line of Dr. Grier and Unit 14, N 46-20'E 1342.98 feet to a corner of Lot No. 72 and Dr. Grier; thence as the rear lines of the Lots in Unit 14, as replatted, the following calls, S 89-02'E 52.28 feet to an iron stake; thence N 63-50'E 18.09 feet to an iron stake; thence N 28-54'W 105.12 feet to an iron stake; thence N 41-32'W 144.21 feet to an iron stake; thence N 55-07'W 128.81 feet to an iron stake; thence N 69-57'W 84.29 feet to an iron stake; thence N 77-42'W 97.00 feet to an iron stake; thence N 72-11'W 139.48 feet to an iron stake; thence S 67-29'W 143.90 feet to an iron stake; thence N 59-25'W 139.94 feet to an iron stake; thence N 32-51'W 163.07 feet to an iron stake; thence N 20-16'E 170.50 feet to an iron stake; thence N 9-16'E 312.73 feet to a corner in the South Line of Carson Drive; thence crossing Carson Drive, and Beyond N 5-38'W 188.44 feet to the Northwest corner of Lot No. 90, Unit 14; thence as the North lines of the Lots in Unit 14 and Unit 16, Pinehurst, Incorporated, the following calls, N 84-22'E 1503.69 feet to a corner; thence N 84-11'37"E 3874.77 feet to a corner; thence S 0-54'31"W 208.36 feet to a corner; thence N 84-12'01"E 208.16 feet to a corner; thence continuing as the lines of the lands now or formerly owned by Pinehurst, Incorporated, the following calls, S 1-03'42"W 3517.78 feet to a corner; thence S 88-47'03"W 1043.54 feet to a corner; thence S 1-13'14"E 746.57 feet to a corner; thence S 1-13'55"E 16.58 feet to a corner; thence N 86-24'23"W 414.39 feet to a corner; thence S 2-59'11"W 2042.63 feet to a corner; thence N 87-00'13"W 1164.10 feet to a corner; thence S 2-04'00"W 949.69 feet to a corner; thence S 86-33'25"E 748.20 feet to a corner; thence N 84-01'15"E 404.84 feet to a corner; thence S 86-59'14"E 400.00 feet to a corner; thence S 3-01'47"W 400.05 feet to a corner; thence N 86-56'18"W 399.74 feet to a corner; thence S 3-07'44"W 475.83 feet to a corner; thence N 81-46'00"W 1141.36 feet to a corner; thence S 2-04'52"W 1293.79 feet to the beginning containing 1100 acres more or less.

Excepted from the above described area is a 56.88 acre tract around the Monroe Town Community, described as follows:

Beginning at the Southwest corner of the 56.88 acre tract surrounding the Community of Monroe Town, said beginning corner being described as being located N 39-02'04"E 309.72 feet from the most easterly corner of Lot No. 48 as shown on a plat of Pinehurst, Incorporated, Phase 2, Unit 17 recorded in Plat Cabinet 2 at slides 1 thru 5 in the Moore County registry; running thence from the beginning, as the lines of the Monroe Town Tract, N 6-47'35"E 1069.68 feet to a corner; thence S 84-03'34"E 1142.41 feet to a corner; thence S 70-55'40"E 563.61 feet to a corner; thence S 6-31'23"W 1766.20 feet; thence N 58-02'25"W 1879.76 feet to the beginning, containing 56.88 acres, more or less.

Sec. 2. This act becomes effective June 30, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 595 **CHAPTER 467**

AN ACT TO ADD AN INDIAN MEMBER FROM THE MEHERRIN TRIBE TO THE COMMISSION ON INDIAN AFFAIRS AND TO MAKE CERTAIN TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-407(a) reads as rewritten:

"(a) The State Commission of Indian Affairs shall consist of two persons appointed by the General Assembly, the Secretary of Human Resources, the Director of the State Employment Security Commission, the Secretary of Administration, the Secretary of Environment, Health, and Natural Resources, the Commissioner of Labor or their designees and ~~15~~ 18 representatives of the Indian community. These ~~15~~ Indian members shall be selected by tribal or community consent from the Indian groups that are recognized by the State of North Carolina and are principally geographically located as follows: the Coharie of Sampson and Harnett Counties; the Eastern Band of Cherokees; the Haliwa of Halifax, Warren, and adjoining counties; the Lumbees of Robeson, Hoke and Scotland Counties; the Meherrin of Hertford County; the Waccamaw-Siouan from Columbus and Bladen Counties; and the Native Americans located in Cumberland, Guilford and Mecklenburg Counties. The Coharie shall have two members; the Eastern Band of Cherokees, two; the Haliwa, two; the Lumbees, three; the Meherrin, one; the Waccamaw-Siouan, two; the Cumberland County Association for Indian People, two; the Guilford Native Americans, two; the Metrolian Native Americans, two. ~~If the Eastern Band of Cherokees should choose to participate, then they shall have two members on the commission thereby bringing~~

~~the total Indian membership to 17.~~ Of the two appointments made by the General Assembly, one shall be made upon the recommendation of the Speaker, and one shall be made upon recommendation of the President of the Senate. Appointments by the General Assembly shall be made in accordance with G.S. 120-121 and vacancies shall be filled in accordance with G.S. 120-122."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 800 **CHAPTER 468**

AN ACT TO REVISE THE CORPORATE LIMITS OF THE TOWN OF NORWOOD.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 212 of the 1905 Private Laws is rewritten to read:

"Sec. 2. Until modified in accordance with the law, the boundaries of the Town of Norwood are as follows:

BEGINNING AT A POINT at the southeast corner of Fork Road (SR 1766) and Acorn Acres Road (SR 1791); thence, northeasterly, 900 feet, along the south right-of-way line of Acorn Acres Road; thence, northerly, 2880 feet along the east right-of-way line of Oak Avenue (SR1792) to the southeast corner of Parcel 0815 (Map 6563.08); thence, northeasterly, 925 feet, along property lines of Parcels 0815 and 0282 (Map 6563.08) to the northeast corner of Parcel 0282; thence, northwesterly, 796 feet, along the property line of Parcel 0282 to intersection with Allenton Street (SR 1760); thence, north and northeasterly, 500 feet, along the east right-of-way line of Allenton Street; thence northwesterly, 428 feet, along the northeast property lines of Parcels 9916 and 7107 (Map 6564.20) to a corner; thence north and northeasterly, 1235 feet, along the east property line of Parcel 1940 (Map 6564.20) to a corner; thence, northwesterly, 2880 feet, along the northern property line of Parcel 1940 to intersection with Vincent Road (SR 1796); thence, northeasterly, 60 feet, along the eastern right-of-way line of Vincent Road; thence northwesterly, 2550 feet, meandering along the southern property line of Parcel 8984 (Maps 6564.19 and 6564.15) to Pee Dee Avenue (SR1740);

Thence, northerly, 840 feet, along the east right-of-way line of Pee Dee Avenue to the southeast corner of intersection with SR 1794; thence, northwesterly, 1020 feet, along the northern property lines of Parcels 8847, 5951, and 2806 (Map 6564.14) to the northeast corner of lot 2806; thence, southwesterly, 630 feet, along the western

property line of Parcel 2806 to intersection with the north right-of-way line of Wilson Street (SR 1753); thence, southwesterly, 40 feet to a corner of Parcel 8556 (Map 6564.18); thence southwesterly, 250 feet, along property lines of Parcels 8556 and 7492 (Map 6564.18) to the southern corner of Parcel 7492; thence, northwesterly 625 feet, along the southern property lines of Parcel 7492 and Parcels 6469 and 7769 (Map 6564.14) to the center line of flow of Davids Creek; thence, southerly along Davids Creek, 2200 feet, to the north line of Parcel 4680 (Map 6564.17); thence, 140 feet, northwesterly and southwesterly along the property line of Parcel 4680 to intersection with North Main Street (US 52);

Thence, northwesterly, 495 feet, along the north right-of-way line of North Main Street to the southeastern corner of Parcel 9092 (Map 6564.17); thence, northeasterly, 140 feet, to the northeastern corner of Parcel 9092; thence, meandering northwesterly, 632 feet, along the property lines of Parcels 9092, 9112, 8216, 7381, and 7401 (Map 6564.17) to Mary Branch Road (SR 1752); thence, southwesterly, 150 feet, along the eastern right-of-way of Mary Branch Road; thence, northwesterly, 1813 feet, along the northern right-of-way of Lawnwood Drive (SR 1751) to intersection with North Main Street (US 52); thence, southeasterly, 865 feet, across North Main Street and along the western right-of-way line of Northwood Drive to a point a point on a curve of the southern right-of-way line of Lawnwood Drive; thence, southwesterly, 533 feet, to intersection with center line of flow of Davids Creek; thence, southeasterly, 1084 feet, along the center line of Davids Creek to intersection with SR 1923 and the east corner of Parcel 4815 (Map 6564.17); thence, southerly, 48 feet, across SR 1923 to intersection with south right-of-way of SR 1923 and corner of parcels 1652 and 7629 (Map 6564.17); thence, southwesterly, 210 feet, along property line of Parcel 7629 to a corner; thence, southerly, 50 feet, to the center line of the Norfolk & Southern Railway;

Thence, southeasterly, 2200 feet, along the Railway center line to intersection with northwest property line of Parcel 6678 (Map 6563.06); thence, southwesterly, 743 feet, across the southwestern portion of Railway right-of-way and along the northwestern property line of Parcel 6678 to Kendall Street (SR 1927); thence, southwesterly, 380 feet, across Kendall Street and following the western right-of-way line of Willoughly Drive (SR 1986), to intersection of western property line of Parcel 6432 (Map 6563.05); thence, meandering southerly, 495 feet, along western and southern property lines of Parcel 6432 and southern property line of Parcel 7346 (Map 6564.05) to Valley Street; thence, 200 feet, easterly, across Valley Street and along the south property line of Parcels 8268

and 9214 (Map 6563.05) to a corner; thence, southerly and easterly, 300 feet, along property lines of Parcel 9193 (Map 6563.05) and extended to the east right-of-way line of Lee Road; thence, southerly, 100 feet, along Lee Road to corner of Parcel 1042 (Map 6563.05); thence, southeasterly, 470 feet, along southern property lines of Parcels 1042, 2954, 3992, and part of 8705 (Map 6563.05), to corner with Parcel 3680 (Map 6563.05); thence, meandering southerly and easterly, 660 feet, along property lines of Parcel 3680 and Parcels 2493 and 3320 (Map 6563.09) to Pine Street;

Thence, southeasterly, 410 feet, across Pine Street, along the western property lines of Parcels 3185 and 4005 (Map 6563.09), and across Whitley Street (SR 1933) to a point in the southern right-of-way of Whitley Street; thence, northeasterly, 205 feet, along Whitley Street right-of-way to the western corner of Parcel 7835 (Map 6563.10); thence, southeasterly, 205 feet, to a corner with Parcel 8725 (Map 6563.10); thence, southwesterly, 200 feet, to a point in the property line of Parcel 0148 (Map 6563.10); thence, easterly, 422 feet, along south property line of Parcel 7598 (Map 6563.10), across Rock Haven Road and along the southern property line of Parcel 0504 (Map 6563.10) to a corner; thence, meandering northeasterly, 626 feet, along property line of Parcel 0148 to a corner with Parcels 1097 and 3042 (Map 6563.10); thence, 1163 feet, southeasterly, along the eastern property line of Parcel 0148 to corner; thence, easterly, 320 feet, along the southern property line of Parcel 4464 (Map 6563.10) to a corner; thence, southerly, 330 feet, to the south corner of Parcel 7010 (Map 6563.10); thence, easterly, 50 feet, across Hilltop Street to a corner of Parcel 8537 (Map 6563.10); thence, northeasterly, 174 feet, along Parcel 8537 to a corner and intersection with Shady Lane; thence, southeasterly, 1071 feet, along the western right-of-way line of Shady Lane to a point in the property line of Parcel 4777 (Map 6563.14); thence, meandering northeasterly, 510 feet, across Shady Lane, along the southern property line of Parcel 6936 (Map 6563.14) and Parcel 7078 (Map 6563.10), and across Kendall Street; thence, southeasterly, 101 feet, along the eastern right-of-way line of Kendall Street to a corner;

Thence, northeasterly, 200 feet, along the property line of Parcel 0145 (Map 6563.11) to a corner; thence, southeasterly, 1332 feet, along the southwestern property line of Parcel 2763 (Map 6563.15) to a corner; thence, easterly, 2132 feet, along the southern property line of Parcel 2763 to US 52; thence, southerly, 1200 feet, along the western right-of-way line of US 52 to a corner with Parcel 7759 (Maps 6563.15 and 6563.16); thence, easterly, 1175 feet, across Highway 52 and following the southern property line of Parcel 2923 (Map 6563.16) to a corner with Lanier Road (SR 1765); thence,

northerly, 392 feet, along the western right-of-way line of Lanier Road; thence, northwesterly 615 feet, along the property line of Parcel 2923 to a corner; thence, northeasterly, 580 feet, along the property line of Parcel 2923 and crossing Lanier Road to a corner with Parcel 2923 and Norfolk & Southern Railway;

Thence, easterly, 175 feet, across the Railway right-of-way to a point in the western right-of-way of Fork Road (SR 1766), which is the south corner of Parcel 9600 (Map 6563.16); thence, northeasterly, 60 feet, across Fork Road to a point which is the northeast intersection of the Railway and Fork Road rights-of-way; thence, northwesterly, 1265 feet, along the eastern right-of-way line of Fork Road to the POINT OF BEGINNING.

Together with the following described tracts:

Tract 1.

Beginning at a point in the Northern edge of Rocky River, where Haw Branch enters said river, said point being between the second and third pier under the bridge (Highway # 52) and runs with said branch as follows: S. 89 E 130 ft,; thence S. 55 E. 78 ft,; thence N. 82.5 E. 88 ft.; thence S. 75 E. 143 ft.; thence S. 55 E. 180 ft.; thence S. 36 E 50 ft.; thence N. 33.5 E. 230 ft.; thence N. 2 E. 152 ft.; thence N. 35.5 W. 56 ft.; thence S. 41.5 W. 84 ft.; thence N. 85 W. 63 ft.; thence N. 8.5 E. 108 ft.; thence N. 58.75 E. 113 ft.; thence N. 14.5 E. 91 ft.; thence N. 38.5 W. 26 ft.; thence N. 23.75 E 189 ft.; thence N. 33.75 E. 140 ft.; thence N. 52.25 E. 163 ft.; thence N. 26.5 E. 89 ft.; thence N. 11.5 E. 300 ft. to Jessie Lanier line; thence with said line S. 84 W. 615 ft. to the center of Highway # 52; thence with center of said Highway S. 18.5 W. 155 feet to the point of beginning, containing fifteen (15) acres, more or less, being the Town Wastewater Treatment Plant.

Tract 2.

BEGINNING at the point of intersection of the easterly or southerly right of way line of S. R. No. 1760 (Allenton Street) with the southerly or westerly right of way line of S. R. No. 1761, and thence from said beginning point as follows: (1) thirteen courses and distances with the said southerly or westerly right of way line of S. R. No. 1761, each to a point in said line, as hereinafter described: (a) S. 53-26 E. 215.88 feet; and (b) thence S. 56-07 E. 172.42 feet; (c) thence three chords as follows: (i) S. 37-55-30 E. 51.09 feet; (ii) S. 09-31-30 W. 49.82 feet; and (iii) S. 46-26-30 W. 49.54 feet; (d) thence S. 53-17-30 W. 399.45 feet; (e) thence six chords as follows: (i) S. 39-53-30 W. 50.16 feet; (ii) S. 29-42 W. 50.11 feet; (iii) S. 12-33 W. 50-35 feet; (iv) S. 06-03 E. 49.39 feet; (v) S. 25-55 E. 50.02 feet; and (vi) S. 46-33 E. 50.22 feet; (2) Thence leaving the southerly right of way line of the said S. R. No. 1761, with the

southerly or westerly right of way line of a proposed sixty foot road, five courses and distances as follows: (a) N. 81-35-55 W. 118.45 feet a new line to a point; (b) thence N. 65-06-32 W. 81.69 feet another new line to a point; (c) thence N. 57-36-07 W. 84.75 feet another new line to a point in the easterly property line of Mid-Carolina Furniture Industries of High Point, Inc. (hereinafter "Mid-Carolina") as described in deed recorded in Deed Book 337, page 839, Stanly County Registry; (d) thence with Mid-Carolina's easterly property line aforesaid N. 34-57-12 W. 106.95 feet to a point, said point being the northeasterly property corner of Mid-Carolina aforesaid, and said point, also, being Mid-Carolina's southeast property corner as described in deed recorded in Deed Book 337, page 847, Stanly County Registry; and (e) thence with the easterly property line of Mid-Carolina as described in deed recorded in Deed Book 337, page 847, Stanly County Registry N. 34-20-11 W. 183.78 feet to a point in the southerly or easterly right of way line of S. R. No. 1760 (Allenton Street), Mid-Carolina's northeast property corner as described in deed recorded in Deed Book 337, page 847, Stanly County Registry; and (3) thence with the southerly or easterly right of way line of S.R. No. 1760 (Allenton Street) two courses and distances as follows: (a) a chord N. 52-33-30 E. 100.21 feet (the initial sixty feet of which is with the northerly terminus of the proposed road aforesaid) to a point; and (b) thence N. 39-23-30 E. 581.56 feet to the point of beginning, and containing 7.13 acres of land, being the Town Water Treatment Plant.

Tract 3.

Lying and being on the North side of Secondary Road Number 1922 about 2.5 miles west of the Town of Norwood, and across Secondary Road Number 1922 from the South Stanly High School in West Center Township, Stanly County, North Carolina, and particularly described as follows:

BEGINNING at a new spike in the center line of S.R. #1922 which has a right-of-way of 60 feet (said new spike is located North 22-39-35 East 31.5 feet from an existing concrete monument in the South right-of-way line of S.R. #1922, which concrete monument has N.C. Grid Coordinates of N. 541,656.73 and E. 1,652,175.48) and runs thence with the center line of S.R. #1922, South 80-27-47 East 232.69 feet to an existing iron pipe in the center line of said road;

thence with the center line of S.R. #1922, eight calls and distances as follows:

(1) South 79-31-21 East 170.00 feet to an existing iron pipe;
(2) South 79-41-58 East 184.21 feet to a new spike;
(3) South 79-44-42 East 852.52 feet to a new spike;
(4) South 80-14-42 East 304-28 feet to a new spike;

(5) South 79-18-22 East 112.50 feet to a new spike;
(6) South 76-56-37 East 118.72 feet to a new spike;
(7) South 72-50-07 East 99.67 feet to a new spike; and
(8) South 69-25-24 East 99.30 feet to an existing spike in the center of S. R. #1922 over a drain pipe;

thence leaving S. R. #1922 and running North 17-01-17 East 22.49 feet to an existing iron pipe over a drain pipe in the branch;

thence North 02-00-59 East, crossing the North right-of-way line of S. R. #1922, 24.12 feet to a point in the Southwest right-of-way line of Norfolk Southern Railroad;

thence with the right-of-way line of Norfolk Southern Railroad, measured 50 feet from the existing center line of the railroad tracks, twelve calls and distances as follows:

(1) North 35-32-52 West 536.78 feet to a point;
(2) North 36-19-15 West 98.04 feet to a point;
(3) North 39-15-13 West 96.69 feet to a point;
(4) North 43-55-36 West 95.81 feet to a point;
(5) North 48-54-00 West 95.67 feet to a point;
(6) North 53-53-35 West 95.67 feet to a point;
(7) North 58-52-12 West 95.61 feet to a point;
(8) North 64-00-01 West 95.55 feet to a point;
(9) North 69-07-00 West 95.64 feet to a point;
(10) North 74-03-47 West 96.47 feet to a point;
(11) North 77-16-30 West 97.98 feet to a point;
(12) North 78-43-56 West 53.31 feet to a point;

thence continuing with the South right-of-way line of Norfolk Southern Railroad, North 79-09-45 West 695.43 feet to a point in the South right-of-way line of the railroad right-of-way (said point is located South 23-31-32 West 17.99 feet from an existing steel shaft in the right-of-way of the railroad); thence with the W. E. Smith line South 23-31-32 West 574.65 feet to an existing bolt; thence continuing with the W.E. Smith line South 22-39-35 West 210.79 feet to a new iron spike in the center line of S. R. #1922, the point of beginning, and containing 29.14 acres less 1.49 acres which lies within the right-of-way of S. R. #1922, leaving a net acreage outside said right-of-way of 27.65 acres as surveyed by Dent Hall Turner, Registered Land Surveyor Number 1397 and designated as "Town of Norwood Annexation, Wheaton Industries, Inc.", as shown on a revised map dated February 1, 1983, prepared by Dent Hall Turner, Registered Land Surveyor.

The above-described parcel of land is a part of that 98.92 acre tract described in a Deed from R. L. Brown, Jr., Commissioner, to James I. Bowers and wife, Kathleen P. Bowers, dated April 12, 1979 and recorded in Deed Book 312 at page 893, Stanly County Registry.

To the extent these boundaries reference tax lots and blocks as set forth on Stanly County tax maps, the reference refers to corners and boundaries of the properties as more particularly described on the recorded instruments from which the tax lots or blocks were created, and these recorded instruments are incorporated herein by reference for purposes of this boundary description.

An accurate description or map of the boundaries of the Town of Norwood shall be maintained as provided in G.S. 160A-22."

Sec. 2. Any Town taxes previously levied against property that is removed from the Town of Norwood corporate limits by virtue of Section 1 of this act are hereby declared null and void.

Sec. 3. This act becomes effective June 30, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 826

CHAPTER 469

AN ACT TO INCREASE THE REQUIRED MINIMUM FINANCIAL RESPONSIBILITY FOR PROPERTY DAMAGE AND TO INCREASE OTHER AMOUNTS IN THE MOTOR VEHICLES LAWS THAT ARE DEPENDENT UPON THE AMOUNT OF REQUIRED MINIMUM FINANCIAL RESPONSIBILITY FOR PROPERTY DAMAGE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-279.1 reads as rewritten:

"*§ 20-279.1. Definitions.*

The following words and phrases, when used in this Article, shall, for the purposes of this Article, have the meanings respectively ascribed to them in this section, except in those instances where the context clearly indicates a different meaning:

(1) Repealed by Session Laws 1973, c. 1330, s. 39.

(2) 'Conviction': A conviction upon a plea of guilty, or of nolo contendere, or the determination of guilt by a jury or by a court though no sentence has been imposed or, if imposed, has been suspended, and it includes a forfeiture of bail or collateral deposited to secure appearance in court of the defendant, unless the forfeiture has been vacated.

(3) 'Judgment': Any judgment which shall have become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United States, upon a cause of action arising out of the ownership, maintenance or use of any

motor vehicle, for damages, including damages for care and loss of services, because of bodily injury to or death of any person, or for damages because of injury to or destruction of property, including the loss of use thereof, or upon a cause of action on an agreement of settlement for such damages.

(4) to (6) Repealed by Session Laws 1973, c. 1330, s. 39.

(7) 'Nonresident's operating privilege': The privilege conferred upon a nonresident by the laws of this State pertaining to the operation by him of a motor vehicle in this State.

(8) to (10) Repealed by Session Laws 1973, c. 1330, s. 39.

(11) 'Proof of financial responsibility': Proof of ability to respond in damages for liability, on account of accidents occurring subsequent to the effective date of said proof, arising out of the ownership, maintenance or use of a motor vehicle, in the amount of twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident, and, subject to said limit for one person, in the amount of fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and in the amount of ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident. Nothing contained herein shall prevent an insurer and an insured from entering into a contract, not affecting third parties, providing for a deductible as to property damage at a rate approved by the Commissioner of Insurance.

(12) Repealed by Session Laws 1973, c. 1330, s. 39."

Sec. 2. G.S. 20-279.5(c) reads as rewritten:

"(c) This section shall not apply under the conditions stated in G.S. 20-279.6 nor:

(1) To such operator or owner if such owner had in effect at the time of such accident an automobile liability policy with respect to the motor vehicle involved in such accident;

(2) To such operator, if not the owner of such motor vehicle, if there was in effect at the time of such accident a motor vehicle liability policy or bond with respect to his operation of motor vehicles not owned by him;

(3) To such operator or owner if the liability of such operator or owner for damages resulting from such accident is, in the judgment of the Commissioner, covered by any other form

of liability insurance policy or bond or sinking fund or group assumption of liability;

(4) To any person qualifying as a self-insurer, nor to any operator for a self-insurer if, in the opinion of the Commissioner from the information furnished him, the operator at the time of the accident was probably operating the vehicle in the course of the operator's employment as an employee or officer of the self-insurer; nor

(5) To any employee of the United States government while operating a vehicle in its service and while acting within the scope of his employment, such operations being fully protected by the Federal Tort Claims Act of 1946, which affords ample security to all persons sustaining personal injuries or property damage through the negligence of such federal employee.

No such policy or bond shall be effective under this section unless issued by an insurance company or surety company authorized to do business in this State, except that if such motor vehicle was not registered in this State, or was a motor vehicle which was registered elsewhere than in this State at the effective date of the policy or bond, or the most recent renewal thereof, or if such operator not an owner was a nonresident of this State, such policy or bond shall not be effective under this section unless the insurance company or surety company if not authorized to do business in this State shall execute a power of attorney authorizing the Commissioner to accept service on its behalf of notice or process in any action upon such policy, or bond arising out of such accident, and unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction where the motor vehicle is registered or, if such policy or bond is filed on behalf of an operator not an owner who was a nonresident of this State, unless said insurance company or surety company, if not authorized to do business in this State, is authorized to do business in the state or other jurisdiction of residence of such operator; provided, however, every such policy or bond is subject, if the accident has resulted in bodily injury or death, to a limit, exclusive of interest and cost, of not less than twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, to a limit of not less than fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and, if the accident has resulted in injury to or destruction of property, to a limit of not less than ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident."

Sec. 3. G.S. 20-279.15 reads as rewritten:

"*§ 20-279.15. Payment sufficient to satisfy requirements.*

In addition to other methods of satisfaction provided by law, judgments herein referred to shall, for the purpose of this Article, be deemed satisfied:

(1) When twenty-five thousand dollars ($25,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident; or

(2) When, subject to such limit of twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person, the sum of fifty thousand dollars ($50,000) has been credited upon any judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident; or

(3) When ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) has been credited upon any judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident;

Provided, however, payments made in settlement of any claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Sec. 4. G.S. 20-279.21(b)(2) reads as rewritten:

"(2) Shall insure the person named therein and any other person, as insured, using any such motor vehicle or motor vehicles with the express or implied permission of such named insured, or any other persons in lawful possession, against loss from the liability imposed by law for damages arising out of the ownership, maintenance or use of such motor vehicle or motor vehicles within the United States of America or the Dominion of Canada subject to limits exclusive of interest and costs, with respect to each such motor vehicle, as follows: twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident; and".

Sec. 5. G.S. 20-280 reads as rewritten:

"*§ 20-280. Filing proof of financial responsibility with governing board of municipality or county.*

(a) Within 30 days after March 27, 1951, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs within a municipality shall file with the governing board of the municipality in which such business is operated proof of financial responsibility as hereinafter defined.

No governing board of a municipality shall hereafter issue any certificate of convenience and necessity, franchise, license, permit or other privilege or authority to any person, firm or corporation authorizing such person, firm or corporation to engage in the business of operating a taxicab or taxicabs within the municipality unless such person, firm or corporation first files with said governing board proof of financial responsibility as hereinafter defined.

Within 30 days after the ratification of this section, every person, firm or corporation engaging in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities, shall file with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

No person, firm or corporation shall hereafter engage in the business of operating a taxicab or taxicabs without the corporate limits of a municipality or municipalities in any county unless such person, firm or corporation first files with the board of county commissioners of the county in which such business is operated proof of financial responsibility as hereinafter defined.

(b) As used in this section 'proof of financial responsibility' shall mean a certificate of any insurance carrier duly authorized to do business in the State of North Carolina certifying that there is in effect a policy of liability insurance insuring the owner and operator of the taxicab business, his agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident and arising out of the ownership, use or operation of such taxicab or taxicabs, subject to limits (exclusive of interests and costs) with respect to each such motor vehicle as follows: twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident.

(c) Every person, firm or corporation who engages in the taxicab business and who is a member of or participates in any trust fund or sinking fund, which said trust fund or sinking fund is for the sole purpose of paying claims, damages or judgments against persons, firms or corporations engaging in the taxicab business and which trust fund or sinking fund is approved by the governing body of any city or municipality with a population of over 50,000, shall be deemed a compliance with the financial responsibility provisions of this section.

Provided, however, that in the case of operators of 15 or more taxicabs, the limits (exclusive of interests and costs), with respect to each such motor vehicle shall be as follows: twenty thousand dollars ($20,000) because of bodily injury to or death of one person in any one accident and, subject to said limit for one person, forty thousand dollars ($40,000) because of bodily injury to or death of two or more persons in any one accident, and ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident."

Sec. 6. G.S. 20-281 reads as rewritten:

"*§ 20-281. Liability insurance prerequisite to engaging in business; coverage of policy.*

From and after July 1, 1953, it shall be unlawful for any person, firm or corporation to engage in the business of renting or leasing motor vehicles to the public for operation by the rentee or lessee unless such person, firm or corporation has secured insurance for his own liability and that of his rentee or lessee, in such an amount as is hereinafter provided, from an insurance company duly licensed to sell motor vehicle liability insurance in this State. Each such motor vehicle leased or rented must be covered by a policy of liability insurance insuring the owner and rentee or lessee and their agents and employees while in the performance of their duties against loss from any liability imposed by law for damages including damages for care and loss of services because of bodily injury to or death of any person and injury to or destruction of property caused by accident arising out of the operation of such motor vehicle, subject to the following minimum limits: twenty-five thousand dollars ($25,000) because of bodily injury to or death of one person in any one accident, and fifty thousand dollars ($50,000) because of bodily injury to or death of two or more persons in any one accident, and ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) because of injury to or destruction of property of others in any one accident. Provided, however, that nothing in this Article shall prevent such operators from qualifying as self-insurers under terms and conditions to be prepared and prescribed by the Commissioner of Motor Vehicles or by giving bond with personal or corporate surety, as now provided by G.S.

20-279.24, in lieu of securing the insurance policy hereinbefore provided for."

Sec. 7. G.S. 58-37-35(b) reads as rewritten:

"(b) The Facility shall reinsure for each coverage available therein to the standard percentage of one hundred percent (100%) or lesser equitable percentage established in the plan of operation as follows:

(1) For the following coverages of motor vehicle insurance and in at least the following amounts of insurance:
   a. Bodily injury liability: twenty-five thousand dollars ($25,000) each person, fifty thousand dollars ($50,000) each accident;
   b. Property damage liability: ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) each person;
   c. Medical payments: one thousand dollars ($1,000) each person; except that this coverage shall not be available for motorcycles;
   d. Uninsured motorist: twenty-five thousand dollars ($25,000) each person; fifty thousand dollars ($50,000) each accident for bodily injury; ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) each accident property damage (one hundred dollars ($100.00) deductible);
   e. Any other motor vehicle insurance or financial responsibility limits in the amounts required by any federal law or federal agency regulation; by any law of this State; or by any rule duly adopted under Chapter 150B of the General Statutes or by the North Carolina Utilities Commission.

(2) Additional ceding privileges for motor vehicle insurance shall be provided by the Board of Governors if there is a substantial public demand for a coverage or coverage limit of any component of motor vehicle insurance up to the following:

Bodily injury liability: one hundred thousand dollars ($100,000) each person, three hundred thousand dollars ($300,000) each accident;

Property damage liability: fifty thousand dollars ($50,000) each accident;

Medical payments: two thousand dollars ($2,000) each person;

Underinsured motorist: one hundred thousand dollars ($100,000) each person and three hundred thousand dollars ($300,000) each accident for bodily injury liability;

Uninsured motorist: one hundred thousand dollars ($100,000) each person and each accident for bodily injury and ~~ten thousand dollars ($10,000)~~ fifteen thousand dollars ($15,000) for property damage (one hundred dollars ($100.00) deductible).

(3) Whenever the additional ceding privileges are provided as in G.S. 58-37-35(b)(2) for any component of motor vehicle insurance, the same additional ceding privileges shall be available to 'all other' types of risks subject to the rating jurisdiction of the North Carolina Rate Bureau."

Sec. 8. G.S. 20-279.25(a) reads as rewritten:

"(a) Proof of financial responsibility may be evidenced by the certificate of the State Treasurer that the person named therein has deposited with him ~~sixty thousand dollars ($60,000)~~ sixty-five thousand dollars ($65,000) in cash, or securities such as may legally be purchased by savings banks or for trust funds of a market value of ~~sixty thousand dollars ($60,000).~~ sixty-five thousand dollars ($65,000). The State Treasurer shall not accept any such deposit and issue a certificate therefor and the Commissioner shall not accept such certificate unless accompanied by evidence that there are no unsatisfied judgments of any character against the depositor in the county where the depositor resides."

Sec. 9. Sections 1, 4, 5, 6, 7 and 8 of the act become effective January 1, 1992, for all new and renewal policies written to be effective on or after that date. Sections 2 and 3 of the act become effective January 1, 1992.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 851 **CHAPTER 470**

AN ACT TO PROVIDE THAT TO THE EXTENT A COUNTY PROVIDES LIABILITY INSURANCE TO COUNTY OFFICERS OR EMPLOYEES IT SHALL PROVIDE LIABILITY INSURANCE TO THE REGISTER OF DEEDS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 161 of the General Statutes is amended by adding a new section to read:

"*§ 161-4.2. Liability insurance for register of deeds.*

To the same extent that the county provides liability insurance to other county officers or employees, pursuant to G.S. 153A-97 and 160A-167, or 58-32-10, or Article 23 of Chapter 58 of the General Statutes, the county shall provide insurance to the register of deeds.

If the county does not provide insurance to any officers or employees, then the county shall notify the register of deeds, in writing, prior to the first Monday in December of each year, of its intent not to provide insurance coverage to the register of deeds. This required notification shall be in the form of a letter signed by the chairman of the board of county commissioners, attested by the clerk of the board of county commissioners. If the county fails to provide the required notice, then the county shall be liable for damages that would have been paid had the county purchased the insurance pursuant to the General Statutes sections cited above."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 873 **CHAPTER 471**

AN ACT TO EXTEND THE DEADLINE FOR COMPLETING THE CLASSIFICATION OF WATER SUPPLY WATERSHEDS AND FOR THE SUBMISSION OF LOCAL WATER SUPPLY WATERSHED PROTECTION ORDINANCES AND TO REQUIRE THAT STATE AGENCIES COMPLY WITH WATER SUPPLY WATERSHED PROTECTION RULES AND ORDINANCES.

The General Assembly of North Carolina enacts:

Section 1. Section 5 of Chapter 426 of the 1989 Session Laws reads as rewritten:

"Sec. 5. (a) The Environmental Management Commission shall adopt water supply watershed classifications and applicable management requirements as required by G.S. 143-214.4(b) no later than 1 January 1991.

(b) The Environmental Management Commission shall publish the proposed classification of all existing water supply watersheds under the classifications adopted pursuant to G.S. 143-214.4(b) no later than 1 January 1991. The Environmental Management Commission shall complete the classification of all existing water supply watersheds no later than 1 ~~January~~ July 1992.

(c) Every local government shall submit a local water supply management and protection ordinance to the Environmental Management Commission for approval ~~by 1 July 1992,~~ according to the following schedule:

(1) Municipalities with a population of 5,000 or more, by 1 July 1993.

(2) Municipalities with a population of less than 5,000, by 1 October 1993.

(3) Counties, by 1 January 1994."

Sec. 2. G.S. 143-214.5 is amended by adding a new subsection to read:

"(i) Every State agency shall act in a manner consistent with the policies and purposes of this section, and shall comply with the minimum statewide water supply watershed management requirements adopted by the Commission and with all water supply watershed management and protection ordinances adopted by local governments."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 874 **CHAPTER 472**

AN ACT TO MODERNIZE THE LAW REGARDING THE TAKING UP OF STRAY LIVESTOCK AND TO CONFORM THAT LAW WITH THE LAW REGARDING THE TAKING UP OF LIVESTOCK RUNNING AT LARGE.

The General Assembly of North Carolina enacts:

Section 1. Chapter 79 of the General Statutes is repealed.

Sec. 2. Article 3 of Chapter 68 of the General Statutes is amended by adding a new section to read:

"*§ 68-18.1. Notice when owner not known.*

If the owner of the impounded livestock is not known or cannot be found, the impounder shall inform the register of deeds that he has impounded the livestock and provide the register of deeds with a description of the livestock. The register of deeds shall record the information in a book kept for that purpose, and shall charge the impounder a fee of ten dollars ($10.00). The register of deeds shall immediately publish a notice of the impoundment of the animal by posting a notice on the courthouse door. The notice on the courthouse door shall be posted for 30 days, and shall contain a full description of the livestock impounded, including all marks or brands on the livestock, and shall state when and where the animal was taken up. The impounder shall publish once, in some newspaper published and distributed in the county, a notice containing the same information as the notice posted by the register of deeds. The fees for publishing the notice shall be paid by the impounder."

Sec. 3. G.S. 68-17 reads as rewritten:

"*§ 68-17. Impounding livestock at large; right to recover costs and damages.*

Any person may take up any livestock running at large or straying and impound the same; and such impounder may recover from the owner the reasonable costs of impounding and maintaining the livestock as well as damages to the impounder caused by such livestock, and may retain the livestock, with the right to use with proper care until such recovery is had. Reasonable costs of impounding shall include any fees paid pursuant to G.S. 68-18.1 in order to locate the owner."

Sec. 4. G.S. 68-20 reads as rewritten:

"*§ 68-20. Notice of sale and sale where owner fails to redeem or is unknown; application of proceeds.*

If the owner fails to redeem his livestock within three days after the notice and demand as provided in G.S. 68-18 is received or within three days after the determination of the costs and damages as provided in G.S. 68-19, then, upon written notice fully describing the livestock, stating the place, date, and hour of sale posted at the courthouse door and three or more public places in the township where the owner resides, and after 10 days from such posting, the impounder shall sell the livestock at public auction. If the owner of the livestock ~~is not known~~ remains unknown to the impounder, then, 30 days after publication of the notice required by G.S. 68-18.1, the impounder shall post at the courthouse door and three public places in the township where the livestock is impounded a ~~upon~~ written notice fully describing the livestock, and stating the place, date, and hour of ~~sale~~ sale. ~~posted at the courthouse door and three public places in the township where the livestock is impounded, and after~~ After 20 days from such posting, the impounder shall sell the livestock at public auction. The proceeds of any such public sale shall be applied to pay the reasonable costs of impounding and maintaining the livestock and the damages to the impounder caused by the ~~livestock~~ livestock. Reasonable costs of impounding shall include any fees paid pursuant to G.S. 68-18.1 in an attempt to locate the owner of the livestock. ~~and the~~ The balance, if any, shall be paid to the owner of the livestock, if known, or, if the owner is not known, then to the school fund of the county where the livestock was impounded."

Sec. 5. This act is effective upon ratification and applies to all animals taken up on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 908 **CHAPTER 473**

AN ACT TO ESTABLISH REGULATORY FEES FOR ELECTRIC MEMBERSHIP CORPORATIONS AND TELEPHONE

MEMBERSHIP CORPORATIONS TO DEFRAY THE COST TO THE NORTH CAROLINA RURAL ELECTRIFICATION AUTHORITY OF REGULATING MEMBERSHIP CORPORATIONS IN THE INTEREST OF THE PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. Article 1 of Chapter 117 of the General Statutes is amended by adding a new section to read:

"*§ 117-3.1. Regulatory fee.*

(a) Fee Imposed. It is the policy of the State of North Carolina to provide fair regulation of electric and telephone membership corporations in the interest of the public. The cost of regulating electric and telephone membership corporations is a burden incident to the privilege of operating as an electric or telephone membership corporation. Therefore, for the purpose of defraying the cost of regulating electric and telephone membership corporations, every electric and telephone membership corporation subject to the jurisdiction of the Authority shall pay a quarterly regulatory fee, in addition to all other fees and taxes, as provided in this section. The fees collected shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public.

(b) Rate.

1. For the 1991-92 fiscal year, the regulatory fee shall be three and three-fourths cents (3 3/4¢) for each electric membership corporation's North Carolina meter connected for service for that quarter and three and three-fourths cents (3 3/4¢) for each telephone membership corporation's North Carolina access line connected for service for that quarter.
2. For fiscal years beginning on or after July 1, 1992, the regulatory fee shall be that established by the General Assembly for each electric membership corporation's North Carolina meter connected for service and each telephone membership corporation's North Carolina access line connected for service for each quarter.

When the Authority prepares its budget request for the upcoming fiscal year, the Authority shall propose a rate for the regulatory fee. For fiscal years beginning in an odd-numbered year, that proposed rate shall be included in the budget message the Governor submits to the General Assembly pursuant to G.S. 143-11. For fiscal years beginning in an even-numbered year, that proposed rate shall be included in a special budget message the Governor

shall submit to the General Assembly. The General Assembly shall set the regulatory fee by law.

The regulatory fee may not exceed the amount necessary to generate funds sufficient to defray the estimated cost of the operations of the Authority for the upcoming fiscal year, including a reasonable margin for a reserve fund. The amount of the reserve may not exceed the estimated cost of operating the Authority for the upcoming fiscal year. In calculating the amount of the reserve, the General Assembly shall consider all relevant factors that may affect the cost of operating the Authority or a possible unanticipated increase or decrease in North Carolina electric meters and North Carolina telephone access lines.

(c) When Due. The regulatory fee imposed under this section is due and payable to the Authority on or before the 15th day of the second month following the end of each quarter. Every electric and telephone membership corporation subject to the regulatory fee shall, on or before the date the fee is due for each quarter, prepare and render a report on a form prescribed by the Authority. The report shall state the electric or telephone membership corporation's total North Carolina electric meters or North Carolina telephone access lines connected for service for the preceding quarter and shall be accompanied by any supporting documentation that the Authority may by rule require.

(d) Use of Proceeds. A special fund in the office of the State Treasurer, the North Carolina Rural Electrification Authority Fund (NCREA Fund), is created. The fees collected pursuant to this section and all other funds received by the Authority shall be deposited in the NCREA Fund. The NCREA Fund shall be placed in an interest bearing account and any interest or other income derived from the NCREA Fund shall be credited to the NCREA Fund. Moneys in the NCREA Fund shall only be spent pursuant to an appropriation by the General Assembly.

The NCREA Fund shall be subject to the provisions of the Executive Budget Act except that no unexpended surplus of the NCREA Fund shall revert to the General Fund. All funds credited to the NCREA Fund shall be used only to pay the expenses of the Authority in regulating electric and telephone membership corporations in the interest of the public as provided by this Chapter."

Sec. 2. Nothing herein contained shall be construed to obligate the General Assembly to appropriate funds to implement the provisions of this act.

Sec. 3. This act becomes effective July 1, 1991, and shall apply to electric and telephone membership corporation North Carolina meters and access lines connected for service on or after that date.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 942 **CHAPTER 474**

AN ACT TO PROVIDE PRIORITY CONSIDERATION TO STATE EMPLOYEES WHO RECEIVE REDUCTION IN FORCE NOTIFICATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-7.1 reads as rewritten:

"*§ 126-7.1. Posting requirement; State employees receive priority consideration.*

(a) All vacancies for which any State agency, department, or institution openly recruit shall be posted within at least the following:

(1) The personnel office of the agency, department, or institution having the vacancy; and

(2) The particular work unit of the agency, department, or institution having the vacancy

in a location readily accessible to employees. If the decision is made, initially or at any time while the vacancy remains open, to receive applicants from outside the recruiting agency, department, or institution, the vacancy shall be listed with the Office of State Personnel for the purpose of informing current State employees of such vacancy. The State agency, department, or institution may not receive approval from the Office of State Personnel to fill a job vacancy if the agency, department, or institution cannot prove to the satisfaction of the Office of State Personnel that it complied with these posting requirements. The agency, department, or institution which hires any person in violation of these posting requirements shall pay such person when employment is discontinued as a result of such violation for the work performed during the period of time between his initial employment and separation.

(b) Subsection (a) of this section does not apply to vacancies which must be filled immediately to prevent work stoppage or the protection of the public health, safety, or security.

(c) If a State employee:

(1) Applies for another position of State employment; and

(2) Has substantially equal qualifications as an applicant who is not a State employee then the State employee shall receive

priority consideration over the applicant who is not a State employee.

(c1) If a State employee who has been separated due to reduction in force or who has been given notice of imminent separation due to reduction in force:

(1) Applies for another position of State employment equal to or lower in salary grade than the position held by the employee at the time of notification or separation; and

(2) Is determined qualified for that position

then within the separating agency, the State employee shall receive priority consideration over other applicants including those who are current State employees not affected by the reduction in force. Within all other agencies, the State employee shall receive priority consideration over other applicants from outside State government, but shall receive equal consideration with other applicants who are current State employees not affected by the reduction in force. This priority shall remain in effect for a period of 12 months from the date the employee receives notification of separation by reduction in force. State employees separated due to reduction in force shall receive higher priority than other applicants with employment or reemployment priorities, except that the reemployment priority created by G.S. 126-5(e)(1) shall be considered as equal. The reduction in force priority created by this act shall be administered in accordance with rules promulgated by the State Personnel Commission.

(d) 'Qualifications' within the meaning of subsection (c) of this section shall consist of:

(1) Training or education;

(2) Years of experience; and

(3) Other skills, knowledge, and abilities that bear a reasonable functional relationship to the abilities and skills required in the job vacancy applied for."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

H.B. 1121 **CHAPTER 475**

AN ACT TO AUTHORIZE THE DEPARTMENT OF LABOR TO ASSESS ADDITIONAL FEES AGAINST AMUSEMENT DEVICE OWNERS UNDER CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-106 reads as rewritten:

"§ 95-106. Amusement, aerial tramway, and inclined railroad inspection fees.

(a) The Department of Labor shall assess and collect the following inspection service fees for annual inspections for each location within the State of amusement devices, aerial passenger tramways, and inclined railroads:

Type Inspection	Unit Fee
Amusement Devices	$15
Gondolas, Chairlifts, and Inclined Railroads	137
J- or T-Bars	62
Rope Tows	31.

(b) In the event that an amusement device owner or operator notifies the Department of Labor pursuant to G.S. 95-111.8 that he intends to operate one or more amusement devices for the public at a particular location and requests an inspection at a particular time:

(1) When the inspector arrives and no amusement devices are present, the Department shall assess a fee against the owner or operator at an amount sufficient to cover the cost of travel to and from the location at a rate not to exceed twenty-three cents (23¢) per mile plus the time expended by the inspector in travelling to and from the location at a rate not to exceed fifteen dollars ($15.00) per hour per inspector.

(2) When the inspector arrives and amusement devices are present but are not ready for inspection, the Department shall assess a fee in an amount sufficient to cover the time the inspector must wait before he can make the inspection at a rate not to exceed fifteen dollars ($15.00) per hour per inspector. If the inspector must make an additional trip to the location because the devices were not ready for inspection at the appropriate time, the Department shall add to the fees authorized under this subdivision the cost of the additional travel required at a rate not to exceed twenty-three cents (23¢) per mile plus the cost of the travel time expended by the inspector at a rate not to exceed fifteen dollars ($15.00) per hour per inspector.

No fee shall be assessed pursuant to this subsection if the owner or operator has notified the Department of Labor at least 24 hours in advance that the amusement devices will not be present or that the devices will not be ready for inspection until a later specified time."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 227 **CHAPTER 476**

AN ACT TO INCREASE THE MAXIMUM BENEFITS WHICH THE INSURANCE COMMISSIONER MAY AUTHORIZE TO BE PAID BY CERTAIN FRATERNAL BENEFIT SOCIETIES AND TO EXTEND THE PERIOD OF TIME FOR QUALIFYING FOR THE MEDICARE SUPPLEMENT AND LONG-TERM CARE INSURANCE SUPPLEMENTAL LICENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-24-185(a) reads as rewritten:

"(a) Nothing contained in this Article shall be construed as to affect or apply to:

(1) Grand or subordinate lodges of societies, orders or associations now doing business in this State which provide benefits exclusively through local or subordinate lodges;

(2) Orders, societies or associations which admit to membership only persons engaged in one or more crafts or hazardous occupations, in the same or similar lines of business, insuring only their own members and their families, and the ladies' societies or ladies' auxiliaries to such orders, societies or associations;

(3) Domestic societies which limit their membership to employees of a particular city or town, designated firm, business house or corporation which provide for a death benefit of not more than five hundred dollars ($500.00) or disability benefits of not more than three hundred fifty dollars ($350.00) to any person in any one year, or both; ~~or~~

(4) Domestic societies or associations of a purely religious, charitable or benevolent description, which provide for a death benefit of not more than five hundred dollars ($500.00) or for disability benefits of not more than three hundred fifty dollars ($350.00) to any one person in any one year, or ~~both.~~ both; or

(5) An association of local lodges of a society now doing business in this State which provides death benefits not exceeding five hundred dollars ($500.00) to any one person, provided, that the Commissioner may authorize the payment of death benefits not exceeding ~~two thousand dollars ($2,000)~~ three thousand dollars ($3,000) to any one person, or may authorize disability benefits not exceeding three hundred dollars ($300.00), or may authorize both payments, in any one year to any one person."

Sec. 2. G.S. 58-33-130(k) reads as rewritten:

"(k) In addition to the 12 annual credit hours required of life or health insurance agents or brokers, in order to renew an appointment or license on and after January 1, 1993, every person holding a supplemental license under G.S. 58-33-25(d2) shall satisfactorily complete two annual credit hours in course instruction covering the principles of Medicare supplement and long-term care insurance, including changes in federal or North Carolina law relating to such insurance. Such additional two hours are not subject to the limitation in subsection (e) of this section. In lieu of taking the supplemental written examination provided for in G.S. 58-33-25(d2) and G.S. 58-33-30(e), persons holding licenses under G.S. 58-33-25(c)(1) or (c)(2) on December 31, 1990, may complete six credit hours in course instruction covering the principles of Medicare supplement and long-term care insurance prescribed by the Commissioner. The six-hour course instruction requirement or the supplemental written examination shall be completed on or before December 31, 1991; and the six-hour course instruction requirement shall be included in the credit hour requirements in subsections (b) and (d) of this section for those persons in subsections (b) and (d) of this section."

Sec. 3. Section 10 of Chapter 941 of the 1989 Session Laws is repealed.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 1st day of July, 1991.

S.B. 12 **CHAPTER 477**

AN ACT MAKING THE ADMINISTRATIVE RULE-MAKING PROCESS MORE UNIFORM AND TO CLARIFY THE SCOPE OF A RULE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 150B-1(d), as enacted by Section 2 of Chapter 418 of the 1991 Session Laws, is amended by deleting subdivisions (d)(5) and (d)(6) and by rewriting subdivision (d)(4) to read as rewritten:

"(4) The Department of ~~Revenue.~~ Revenue, except that Parts 3 and 4 of Article 2A apply to the Department."

Sec. 2. G.S. 150B-20, as enacted by Section 1 of Chapter 418 of the 1991 Session Laws, is amended by adding a new subsection to read:

"(e) Exception. -- This section does not apply to the Department of Correction."

Sec. 2.1. G.S. 150B-17, as recodified as G.S. 150B-4 by Section 4 of Chapter 418 of the 1991 Session Laws, reads as rewritten:

"*§ 150B-17. Declaratory rulings.*

(a) On request of a person aggrieved, an agency shall issue a declaratory ruling as to the validity of a rule or as to the applicability to a given state of facts of a statute administered by the agency or of a rule or order of the agency, except when the agency for good cause finds issuance of a ruling undesirable. The agency shall prescribe in its rules the circumstances in which rulings shall or shall not be issued. A declaratory ruling is binding on the agency and the person requesting it unless it is altered or set aside by the court. An agency may not retroactively change a declaratory ruling, but nothing in this section prevents an agency from prospectively changing a declaratory ruling. A declaratory ruling is subject to judicial review in the same manner as an order in a contested case. Failure of the agency to issue a declaratory ruling on the merits within 60 days of the request for such ruling shall constitute a denial of the request as well as a denial of the merits of the request and shall be subject to judicial review.

(b) This section does not apply to the Department of Correction."

Sec. 3. The Rules Review Commission must review the rules of the Departments of Correction, Transportation, and Revenue to determine if the rules meet the standards for review in G.S. 143B-30.2. A rule that does not meet the standards is repealed effective January 1, 1994. The agencies may adopt, recodify, amend, or repeal a rule in response to an objection by the Commission in the course of this review without publishing notice in the North Carolina Register or holding a rule-making hearing.

Sec. 3.1. G.S. 150B-2(8a)f., as amended by Section 3 of Chapter 418 of the 1991 Session Laws, reads as rewritten:

"f. ~~Instructions,~~ Requirements, communicated to the public by the use of signs or symbols, concerning the use of public roads, bridges, ferries, buildings, or facilities."

Sec. 3.2. G.S. 150B-2(8a)h. reads as rewritten:

"h. Scientific, architectural, or engineering standards, forms, or ~~procedures.~~ procedures, including design criteria and construction standards used to construct or maintain highways, bridges, or ferries."

Sec. 4. G.S. 20-2 reads as rewritten:

"*§ 20-2. Commissioner of Motor ~~Vehicles.~~ Vehicles; rules.*

(a) Commissioner and Assistants. -- The Division of Motor Vehicles shall be administered by the Commissioner of Motor Vehicles, who shall be appointed by and serve at the pleasure of the Secretary of the Department of Transportation. The Commissioner shall be paid an

annual salary to be fixed by the General Assembly in the Current Operations Appropriations Act and allowed his traveling expenses as allowed by law.

In any action, proceeding, or matter of any kind, to which the Commissioner of Motor Vehicles is a party or in which he may have an interest, all pleadings, legal notices, proof of claim, warrants for collection, certificates of tax liability, executions, and other legal documents, may be signed and verified on behalf of the Commissioner of Motor Vehicles by the Assistant Commissioner of Motor Vehicles or by any director or assistant director of any section of the Division of Motor Vehicles or by any other agent or employee of the Division so authorized by the Commissioner of Motor Vehicles.

(b) Rules. The Commissioner may adopt rules to implement this Chapter. Chapter 150B of the General Statutes governs the adoption of rules by the Commissioner."

Sec. 5. G.S. 136-10 reads as rewritten:

"§ *136-10.* ~~*Audit.*~~ *Audit and rules.*

The operations of the Department of Transportation shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. Rules adopted by the Department of Transportation are subject to Chapter 150B of the General Statutes."

Sec. 6. G.S. 148-11 reads as rewritten:

"§ *148-11. Authority to* ~~*make regulations.*~~ *adopt rules.*

The Secretary shall adopt rules for the government of the State prison ~~system and shall file and publish such rules in accordance with the provisions of Article 5 of Chapter 150B. In the case of temporary rules, such rules shall become effective immediately upon adoption by the Secretary and shall be filed in accordance with G.S. 150B-13 within two working days of adoption.~~ system. Chapter 150B of the General Statutes governs the adoption of rules by the Secretary. The Secretary shall have ~~such portion of these~~ the rules ~~and regulations as~~ that pertain to enforcing discipline read to every prisoner when received in the State prison system and a printed copy of these rules ~~and regulations shall be~~ made available to the prisoners."

Sec. 7. G.S. 105-262, as amended by Section 28 of Chapter 45 of the 1991 Session Laws, reads as rewritten:

"§ *105-262.* ~~*Rules and regulations.*~~ *Rules.*

The Secretary of Revenue may adopt ~~regulations~~ rules needed to administer a tax collected by the Secretary or to fulfill another duty delegated to the Secretary. ~~A regulation becomes effective when it is approved by the Tax Review Board. All regulations and amendments thereto shall be published and made available by the Secretary of Revenue.~~ The Tax Review Board shall review a new rule or a change to a rule before it is filed in the North Carolina Administrative Code.

~~The Secretary of Revenue may, from time to time, make and prescribe such administrative rules, not inconsistent with law and the regulations approved by the Tax Review Board, as may be useful for the administration of his department and the discharge of his responsibilities.~~

~~References to rules and regulations of the Secretary of Revenue in this Chapter and in any subsequent amendments or additions thereto (unless expressly provided to the contrary therein) shall be construed to mean those rules and regulations promulgated under the provisions of this section.~~"

Sec. 8. Section 15 of Chapter 418 of the 1991 Session Laws is repealed.

Sec. 9. G.S. 150B-2(8a) is amended by adding a new subpart to read:

"i. Establishment of the interest rate that applies to tax assessments under G.S. 105-241.1 and the variable component of the excise tax on motor fuel under G.S. 105-434."

Sec. 10. This act becomes effective October 1, 1991, and applies to rules for which a notice of rule making is required to be published in the North Carolina Register on or after that date and to all rules that do not require publication of a notice of rule making and are adopted on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 20 **CHAPTER 478**

AN ACT TO PROVIDE AN EXEMPTION FROM CERTAIN DRIVERS LICENSES FOR PUBLIC SAFETY WORKERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-7(a) reads as rewritten:

"(a) Except as otherwise provided in this Chapter, no person shall operate a motor vehicle on a highway unless such person is a resident of this State and has first been licensed by the Division under the provisions of this Article or Article 2C for the class of vehicle being driven. Driver licenses shall be classified under this Article as follows:

(1) Class 'A' which entitles a licensee to drive any vehicle or combination of vehicles with a gross vehicle weight rating (GVWR) of 26,001 pounds or more, provided the GVWR of the vehicle or vehicle being towed are in excess of 10,000 pounds and are exempt from Article 2C of this Chapter. A

Class A license entitles the licensee to operate Class B and C vehicles except motorcycles.

(2) Class 'B' which entitles a licensee to drive a single vehicle with a GVWR of 26,001 pounds or more, or any such vehicle towing a single vehicle not in excess of 10,000 pounds provided the towed vehicle is exempt from Article 2C of this Chapter. A Class B license entitles the licensee to operate Class C vehicles except motorcycles.

(3) Class 'C' which entitles a licensee to drive a single vehicle with a GVWR of less than 26,001 pounds or any such vehicle towing another vehicle with a GVWR not in excess of 10,000 pounds, both of which are exempt from Article 2C. A Class C licensee who is a volunteer member of a municipal or rural fire department, a volunteer member of a rescue squad, or a volunteer member of Emergency Medical Services (EMS) may also drive any fire-fighting vehicle, rescue vehicle, EMS vehicle, or combination of these vehicles, regardless of GVWR, when necessary in the performance of his duty. A Class C license does not entitle the licensee to drive a motorcycle.

Any unusual vehicle shall be assigned by the Commissioner to the most appropriate class under this subsection or Article 2C with suitable special restrictions if they appear to be necessary.

Any person who takes up residence in this State on a permanent basis is exempt from the provisions of this subsection for 30 days from the date that residence is established, if he is properly licensed in the jurisdiction of which he is a former resident."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 107 **CHAPTER 479**

AN ACT TO SIMPLIFY AND MODERNIZE PRIVILEGE LICENSE TAXES RELATING TO DRY CLEANERS AND LAUNDRIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-74 reads as rewritten:

"*§ 105-74. Pressing clubs, dry cleaning plants, and hat blockers.*

(a) Location License. Every ~~person~~ person, firm, or corporation engaging in the business of operating a dry ~~cleaning plant, pressing club~~ cleaning, pressing, or hat blocking ~~establishment~~ business shall apply for and ~~procure~~ obtain from the Secretary of Revenue a State

license for each place of business and shall pay a license tax. The license tax is for the privilege of ~~conducting such a business, and shall pay for such license a tax of fifty dollars ($50.00).~~ engaging in the business. If a place of business does not solicit outside the county where the place of business is located, the license tax is fifty dollars ($50.00). If a place of business solicits outside the county where the place of business is located, the license tax is one hundred dollars ($100.00).

~~Every person, firm, or corporation, soliciting cleaning work and/or pressing in any city or town where the actual cleaning and/or pressing is done in a cleaning plant or press shop located outside the city or town wherein said cleaning work and/or pressing is solicited shall procure from the Secretary of Revenue a State license for the privilege of soliciting in said city or town, and pay for the same a tax of fifty dollars ($50.00). This shall not apply to soliciting in cities or towns where there is no cleaning plant, press shop or established agency with fixed place of business, provided that the solicitor shall have paid a State and municipal license tax in this State.~~

(b) Soliciting License. Every person, ~~firm~~ firm, or corporation engaged in the business of soliciting dry cleaning ~~and/or~~ or pressing work to be done by ~~a dry cleaning plant which has not paid~~ a place of business that is not liable for the State license tax levied ~~herein~~ in subsection (a) shall pay a tax of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00). ~~for each vehicle used in carrying the dry cleaning and/or pressing work, and the license issued by the Secretary of Revenue shall be carried~~ The holder of a soliciting license shall carry the license in the cab of any vehicle ~~so employed.~~ used in soliciting in this State.

(c) Local Licenses. A municipality may tax each place of business that is taxed under subsection (a) and is located in the municipality. The tax may not exceed the rate provided in subsection (a). Counties and municipalities may tax each business taxed under subsection (b). The tax may not exceed the rate provided in subsection (b). ~~Counties, cities and towns may levy a tax upon such persons, firms or corporations not in excess of that levied by the State.~~

~~Cities and towns of under 10,000 population may levy a license tax not in excess of twenty-five dollars ($25.00); cities and towns of 10,000 population and over may levy a license tax not in excess of fifty dollars ($50.00). Counties shall not levy a license tax on the business taxed under this section.~~

~~Counties, cities and towns may not collect a privilege license tax under this section unless the State license tax, if due, has been first paid.~~

~~Definitions:~~ (d) Definitions. ~~For the purpose of this section, the~~ The following definitions ~~shall apply:~~ apply in this section:

(1) Dry cleaning, pressing, or hat blocking business. A place of business where the service ~~'Dry cleaning, and/or hat blocking, and/or pressing establishments' shall mean any place of business, establishment or vehicle wherein the services~~ of dry cleaning, wet cleaning ~~as a process~~ incidental to dry cleaning, ~~spotting and/or~~ spotting, pressing, ~~finishing and/or~~ finishing, or reblocking hats, garments, or wearing apparel of any kind is performed.

(2) Place of business. A fixed place at which a business is maintained.

(3) ~~'Soliciting' as used herein shall mean the acceptance of any~~ Soliciting. Accepting an article or a garment to be dry cleaned ~~and/or pressed.~~ or pressed by taking physical possession of the article or garment.

~~"Person" as used herein shall mean any person, firm, corporation, partnership, or association.~~

(e) Scope. This section ~~shall~~ does not apply to any bona fide student of any college or university in this State operating ~~such~~ a pressing or dry cleaning business at ~~such~~ the college or university during the school term of ~~such~~ the college or university.

A person, firm, or corporation required to be licensed under this section is not required to procure the license under G.S. 105-102.5 for the same location."

Sec. 2. G.S. 105-85 reads as rewritten:

"§ *105-85. Laundries.*

(a) Laundry License. Every person, firm, or corporation engaged in the business of operating a ~~laundry, including wet or damp wash laundries and businesses known as "launderettes," "launderalls" and similar type businesses, where steam, electricity, or other power is used, or who engages in~~ laundry, or engaged in the business of supplying or renting clean ~~linen or towels~~ linen, towels, or wearing apparel, shall apply for and obtain from the Secretary of Revenue a State license for each place of business and shall pay a license tax. The license tax is for the privilege of engaging in ~~such business, and shall pay for such license a tax of fifty dollars ($50.00).~~ the business. If a place of business does not solicit outside the county where the place of business is located, the license tax is fifty dollars ($50.00). If a place of business solicits outside the county where the place of business is located, the license tax is one hundred dollars ($100.00).

(b) Definitions. The following definitions apply in this section:

(1) Laundry. A business where steam, electricity, or other power is used to clean fabric, including a wet or damp wash

laundry, a launderette, a launderall, or a similar business. The term 'launderettes and launderalls' means ~~'Launderettes and launderalls' shall mean~~ commercial establishments in which automatic washing machines and dryers are installed for the use of individual customers, including those ~~which~~ that contain coin-operated or coin-activated washing ~~machines. However, 'launderettes and launderalls' shall~~ machines; however, the term does not include ~~persons who own or operate~~ apartment buildings in which ~~they provide such~~ these machines are provided for the exclusive use and convenience of tenants ~~therein, nor shall such persons be considered to be engaged in any 'similar type business.'~~ of the buildings.

(2) Place of business. A fixed place at which a business is maintained.

(3) Soliciting. Accepting an article or a garment to be laundered by taking physical possession of the article or garment.

~~Every person, firm, or corporation soliciting laundry work or supplying or renting clean linen or towels or wearing apparel in any city or town, outside of the city or town wherein said laundry or linen supply or towel supply or wearing apparel supply business is established, shall procure from the Secretary of Revenue a State license and shall pay for such license a tax of fifty dollars ($50.00) for the privilege of soliciting therein. The additional tax levied in this paragraph shall apply to the soliciting of laundry work or linen supply or towel supply work or wearing apparel supply work in any city or town in which there is a laundry, linen supply or towel supply or wearing apparel supply establishment located in the said city or town. The soliciting of business for or by any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel shall and the same is hereby construed to be engaging in the said business.~~

(c) Soliciting License. Every person, ~~firm~~ firm, or corporation engaged in the business of soliciting laundry work to be done by a ~~laundry or plant which has not paid~~ place of business that is not liable for the State license tax levied ~~herein~~ in subsection (a) shall pay a tax of ~~two hundred dollars ($200.00)~~ one hundred dollars ($100.00). ~~for each vehicle used in carrying the laundry work, and the license issued by the Secretary of Revenue shall be carried~~ The holder of a soliciting license shall carry the license in the cab of any vehicle used in soliciting in this State. ~~so employed. Counties, cities and towns may levy a tax upon such persons, firms or corporations not in excess of that levied by the State.~~

(d) Scope. A person, firm, or corporation required to be licensed under this section is not required to procure the license under G.S. 105-102.5 for the same location.

(e) Local Licenses. A municipality may tax each place of business that is taxed under subsection (a) and is located in the municipality. The tax may not exceed the rate provided in subsection (a). Counties and municipalities may tax each business taxed under subsection (c). The tax may not exceed the rate provided in subsection (c). ~~Counties, cities and towns, respectively, may levy a license tax not in excess of twelve dollars and fifty cents ($12.50) on any person, firm, or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel in instances when said work is performed outside the said county or town, or when the linen or towels or wearing apparel are supplied by business outside said county or town. Cities and towns may levy a license tax not in excess of fifty dollars ($50.00) on any other person, firm or corporation engaged in the business of laundry work and/or supplying or renting clean linen or towels or wearing apparel. Counties, cities and towns may not collect a privilege license tax under this section unless the State license tax, if due, has been first paid.~~"

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 336 **CHAPTER 480**

AN ACT TO AMEND THE LAW RELATING TO THE NORTH CAROLINA MEDICAL DATABASE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. Section 208(d) of Chapter 757 of the 1985 Session Laws reads as rewritten:

"(d) The North Carolina Medical Database Commission shall terminate and Article 11 of Chapter 131E of the General Statutes shall expire on July 1, ~~1991,~~ 1996."

Sec. 2. G.S. 131E-211(b) reads as rewritten:

"(b) The North Carolina Medical Database Commission shall consist of nine members. The appointments shall be made as follows:

(1) One representative of an employer ~~from a business with~~ of 200 or more employees in a business that is unrelated to a health care provider or third-party payor shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(2) One representative of an employer ~~from a business with~~ of less than 200 employees in a business that is unrelated to a health care provider or third-party payor shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(3) One physician shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(4) One hospital administrator shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(5) One representative of a commercial insurance company providing health insurance in North Carolina shall be appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121.

(6) One representative of Blue Cross and Blue Shield of North Carolina shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

(7) One representative of State government at large shall be appointed by the Governor.

(8) One nurse who provides raw data to the Commission pursuant to this Article or who is employed by a health care provider who provides raw data to the Commission pursuant to this Article shall be appointed by the General Assembly upon the recommendation of the Speaker of the House in accordance with G.S. 120-121.

(9) One health care provider that provides raw data to the Commission pursuant to this Article shall be appointed by the General Assembly upon the recommendation of the President of the Senate in accordance with G.S. 120-121.

~~The Insurance Commissioner and the Secretary of Human Resources shall be ex officio members of the Commission without voting power.~~ The Insurance Commissioner, the Secretary of Human Resources, and the Secretary of the Department of Environment, Health, and Natural Resources shall be ex officio members of the Commission without voting power. Any member of the Commission shall be automatically removed from the Commission upon certification by the Commission to the recommending authority that such member no longer satisfies the requirements for appointment to the Commission set forth in subdivisions (b)(1) through (b)(9) of this subsection.

Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. Other vacancies in appointive terms shall be filled for the unexpired portion of the terms by appointment by the Governor."

Sec. 3. G.S. 131E-211(e) reads as rewritten:

"(e) ~~The majority of the Commission shall constitute a quorum for the transaction of business.~~ A majority of the voting members of the Commission shall constitute a quorum."

Sec. 4. G.S. 131E-211(f) reads as rewritten:

"(f) The members of the Commission shall select a chairman and vice-chairman. Effective for terms to begin on or after July 1, 1987, no person may be elected chairman or vice-chairman unless they have been a member of the Commission for ~~two years~~ one year before their election. Effective July 1, 1987, the term of the chairman and vice-chairman shall be one year, and no person may be elected to the same office for two full consecutive terms."

Sec. 5. G.S. 131E-212(f) reads as rewritten:

"(f) Data collected by and furnished to the Commission pursuant to this Article shall not be shared among the other State agencies unless the information is approved by the Commission as a public record pursuant to G.S. 131E-213. Notwithstanding the provisions of G.S. 131E-213, the Commission shall, as soon as practicable after a request by the State Health Director, and where not otherwise prohibited by federal law or regulation, make available to the State Health Director specific individual records, including patient and provider identifiers, in furtherance of the mandate in Chapter 130A of the General Statutes to protect and promote the public health. Records obtained in this manner shall be confidential, shall not be public records, and shall not be made available by the State Health Director notwithstanding G.S. 130A-374(a)(2)."

Sec. 6. Nothing in this act shall obligate the General Assembly to appropriate funds to carry out the provisions of this act.

Sec. 7. This act becomes effective July 1, 1991, except that amendments to G.S. 131E-211(b)(8) and G.S. 131E-211(b)(9) become effective July 1, 1992.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 359 **CHAPTER 481**

AN ACT TO TRANSFER AUTHORITY TO SET FEES FOR SCREENING TESTS FOR ASBESTOSIS OR SILICOSIS TO THE SECRETARY OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 97-72 reads as rewritten:

"*§ 97-72. Appointment of advisory medical committee; terms of office; duties and functions; salaries and expenses.*

(a) There shall be an advisory medical committee consisting of three members, who shall be licensed physicians in good professional standing and peculiarly qualified in the diagnosis ~~and/or~~ or treatment of occupational diseases. They shall be appointed by the Industrial Commission with the approval of the Governor, and one of them shall be designated as chairman of the committee by the Industrial Commission. The members of committee shall be appointed to serve terms as follows: one for a term of two years, one for a term of four years, and one for a term of six years. Upon the expiration of each term as above mentioned the Industrial Commission shall appoint a successor for a term of six years; except that the terms of the members first appointed shall expire June 30, 1936. The function of the committee shall be to conduct examinations and make reports as required by G.S. ~~97-61~~ 97-61.1 through 97-61.6 and 97-68 ~~to~~ through 97-71, and to assist in any postmortem examinations provided for in G.S. 97-67 when so directed by the Industrial Commission. Members of the committee shall devote to the duties of the office so much of their time as may be required in the conducting of examinations with reasonable promptness, and they shall attend hearings as scheduled by the Industrial Commission when their attendance is desired for the purpose of examining and cross-examining them respecting any report or reports made by them.

(b) The members of the advisory medical committee shall be paid one hundred dollars ($100.00) per month ~~and not to exceed three dollars ($3.00)~~ plus not more than ten dollars ($10.00) per film examined. The fee per film shall be ~~determined and approved~~ established by the Secretary of ~~Human Resources.~~ Environment, Health, and Natural Resources.

(c) Notwithstanding any other provision of this Article, the Industrial Commission, in its discretion, may designate a qualified physician who is not a member of the advisory medical committee to perform an examination of an employee who has filed a claim for benefits for asbestosis or silicosis. This physician shall file his reports in the same manner a member of the advisory medical committee files reports; and these reports shall be deemed reports of the advisory medical committee."

Sec. 2. G.S. 97-73 reads as rewritten:

"*§ 97-73. Expenses of making examinations.*

(a) The Industrial Commission shall establish a schedule of reasonable charges to defray expenses incurred in ~~making~~ conducting

examinations and making reports pursuant to ~~G.S. 97-60, 97-61~~ G.S. 97-61.1 through 97-61.6 and ~~97-67,~~ 97-67 through 97-71, such charges to be collected in accordance with rules and regulations which shall be adopted by the Industrial Commission. ~~Said charges shall be collected from employers who by order of the Industrial Commission are determined to be subject to the hazards of asbestosis and/or silicosis.~~

(b) The Secretary of Environment, Health, and Natural Resources shall establish a schedule of reasonable charges for examinations conducted by the Department of Environment, Health, and Natural Resources pursuant to G.S. 97-60. Such charges shall be collected in accordance with rules adopted by the Secretary of Environment, Health, and Natural Resources and shall be used, subject to appropriation by the General Assembly, to defray the costs of conducting the examinations.

(c) Charges imposed pursuant to this section shall be collected from employers who by order of the Industrial Commission are determined to be subject to the hazards of asbestosis or silicosis."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 376 **CHAPTER 482**

AN ACT ADOPTING THE RECOMMENDATIONS OF THE MENTAL HEALTH STUDY COMMISSION CONCERNING MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES IN JAILS.

The General Assembly of North Carolina enacts:

Section 1. The General Assembly adopts the recommendations of the Mental Health Study Commission concerning mental health, developmental disabilities and substance abuse services in jails as approved in December 1990. This adoption by the General Assembly is solely for the purpose of providing policy guidance for the development of services and shall not be deemed to require any additional appropriations or the expenditure of additional funds or be deemed to create any additional right to services.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 530 **CHAPTER 483**

AN ACT TO REPEAL THE SUNSET ON OPEN SEASONS FOR TAKING FOXES WITH WEAPONS AND BY TRAPPING IN CERTAIN COUNTIES, TO PROHIBIT HUNTING ON THE LAND OF ANOTHER WITHOUT PERMISSION IN CERTAIN COUNTIES, TO ESTABLISH A SEASON FOR TAKING BEAVER IN CERTAIN COUNTIES, AND TO ESTABLISH A SEASON FOR TAKING FOXES IN EDGECOMBE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. (a) Section 3 of Chapter 726 of the 1987 Session Laws, as amended by Chapter 504 of the 1989 Session Laws, reads as rewritten:

"Sec. 3. This act ~~shall become~~ is effective upon ~~ratification and shall expire on July 1, 1991.~~ ratification."

(b) This section applies only to Brunswick, Caswell, Clay, Graham, Henderson, Hyde, Macon, Stokes, and Tyrrell Counties.

Sec. 2. (a) Section 1 of Chapter 204 of the 1985 Session Laws reads as rewritten:

"Section 1. It is unlawful for any person to hunt, take, or kill any animal on the land of another or to take fish from private ponds, as defined in G.S. 113-129(13), on the land of another, without the written permission, in his possession, of the owner or lessee of the land. The written permission shall be dated, it shall be valid for a period of no longer than one year after issuance, and it shall be displayed upon request to any law enforcement officer with authority to enforce this act. Nothing in this section shall apply to persons participating in field trials sanctioned by the North Carolina Wildlife Resources Commission under G.S. 113-291.1(d)."

(b) Section 4 of Chapter 204 of the 1985 Session Laws reads as rewritten:

"Sec. 4. This act applies only to ~~Hoke County.~~ Hoke, Cleveland, and Scotland Counties."

Sec. 3. (a) Notwithstanding any other law, there is an open season for taking beaver with firearms during any open season for the taking of wild animals, provided that permission has been obtained from the owner or lessee of the land on which the beaver is being taken.

(b) Notwithstanding any other law, it is lawful to use or sell beaver parts taken under a depredation permit issued by the Wildlife Resources Commission.

(c) Notwithstanding G.S. 113-291.6(d) or any other law, it is lawful to set traps number 330 of the connibear type or size, if at least

one-half of the trap is covered by water, when trapping beaver during the season for trapping beaver as established by the Wildlife Resources Commission.

(d) Notwithstanding G.S. 113-291.1(b)(2) or any other law, it is lawful to use snares when trapping beaver during the season for trapping beaver as established by the Wildlife Resources Commission.

(e) This section applies only to Bladen, Brunswick, Columbus, Craven, Johnston, Jones, Lenoir, Pamlico, Randolph, Sampson, and Wayne Counties.

Sec. 4. (a) Notwithstanding any other law, there is an open season for taking foxes by trapping from January 2 or the last day of deer season, whichever is later, through January 31 of each year.

(b) The Wildlife Resources Commission shall provide for the sale of foxes taken lawfully under this act.

(c) A bag limit of 30 applies in the aggregate to all foxes taken during the fox season established in this act.

(d) This section applies only to Edgecombe County.

Sec. 5. Sections 3 and 4 of this act become effective October 1, 1991. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 762 **CHAPTER 484**

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF POSSESSION OF A CONTROLLED SUBSTANCE ON PRISON OR JAIL PREMISES SHALL BE GUILTY OF A CLASS I FELONY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-95(e) is amended by adding a new subdivision to read:

"(9) Any person who violates G.S. 90-95(a)(3) on the premises of a penal institution or local confinement facility shall be guilty of a Class I felony. A person sentenced under this subdivision shall serve a mandatory minimum term of imprisonment of no less than two years for a violation of this subdivision which shall run consecutively with and shall commence at the expiration of any sentence already being served by that person. The sentencing judge may not suspend the mandatory minimum two-year term of imprisonment."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 774 **CHAPTER 485**

AN ACT TO ESTABLISH THE USE OF FISCAL YEARS FOR PROBATE ACCOUNTING PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 28A-21-1 reads as rewritten:

"*§ 28A-21-1. Annual accounts.*

Until the final account has been filed pursuant to G.S. 28A-21-2, the personal representative or collector shall, ~~within 30 days after the expiration of one year from the date of his qualification and annually,~~ for so long as any of the property of the estate remains in his control, custody or possession, file annually in the office of the clerk of superior court an inventory and account, under oath, of the amount of property received by him, or invested by him, and the manner and nature of such investment, and his receipts and disbursements for the past year. ~~The clerk of superior court in his discretion may allow the personal representative or collector to adopt a substitute date for the filing of the first and subsequent annual accounts; provided that the first account using the substitute date must be filed within one year of the opening of the estate or filing of a previous annual account.~~ Such accounts shall be due by the fifteenth day of the fourth month after the close of the fiscal year selected by the personal representative or collector, and annually thereafter. The election of a fiscal year shall be made by the personal representative or collector upon filing of the first annual account. In no event may a personal representative or collector select a fiscal year-end which is more than twelve months from the date of death of the decedent or, in the case of trust administration, the date of the opening of the trust. Any fiscal year selected may not be changed without the permission of the clerk of superior court.

The personal representative or collector shall produce vouchers for all payments or verified proof for payments in lieu of vouchers. The clerk of superior court may examine, under oath, such accounting party, or any other person, concerning the receipts, disbursements or any other matter relating to the estate. He must carefully review and audit such account and, if he approves the account, he must endorse his approval thereon, which shall be *prima facie* evidence of correctness, and cause the same to be recorded."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 934 **CHAPTER 486**

AN ACT TO PERMIT COMMITMENT TO SATELLITE JAIL/WORK RELEASE UNITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-1353(d) reads as rewritten:

"(d) Notwithstanding any other provision of law, when the sentencing court, with the consent of the person sentenced, orders that a person convicted of a misdemeanor be granted work release, the court may commit the person to a specific prison facility or local confinement facility or satellite jail/work release unit within the county of the sentencing court in order to facilitate the work release arrangement. When appropriate to facilitate the work release arrangement, the sentencing court may, with the consent of the sheriff or board of commissioners, commit the person to a specific local confinement facility or satellite jail/work release unit in another county, or, with the consent of the Department of Correction, commit the person to a specific prison facility in another county. The Department of Correction may transfer a prisoner committed to a specific prison facility to a different facility when necessary to alleviate overcrowding or for other administrative purposes."

Sec. 2. G.S. 15A-1340.2(2) is rewritten to read:

"(2) Jail - A jail is a local confinement facility maintained by a county as provided by G.S. 153A-218 or a district confinement facility maintained by two or more units of local government as provided by G.S. 153A-219. For purposes of G.S. 15A-1355(c), a satellite jail/work release unit shall be considered a local confinement facility."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 23 **CHAPTER 487**

AN ACT TO MODIFY THE FUEL TAX STATUTES TO ENABLE NORTH CAROLINA TO ENTER THE INTERNATIONAL FUEL TAX AGREEMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-449.22 reads as rewritten:

"§ *105-449.22. Leased motor vehicles.*

~~(a) Except as provided in this section, the lessee of a motor vehicle, and not the lessor of the motor vehicle, is the "user," "user-seller," or "supplier," as the case may be, for the purposes of this Article.~~

~~(b) A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a user, user-seller or supplier may be treated by the Secretary as a user, user-seller, or supplier with respect to a motor vehicle leased to another by him as well as fuel consumed by the leased motor vehicle when the lessor supplies or pays for the fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee may exclude from reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a user, user-seller, or supplier pursuant to this section.~~

~~(c) Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both the lessor and lessee, however, are jointly and severally liable for compliance with this Article.~~

The user under this Article of fuel consumed by a leased motor vehicle whose operations are reported under Article 36B of this Chapter is the person who is the motor carrier under Article 36B for reporting operations of the motor vehicle. The user under this Article of fuel consumed by a leased motor vehicle whose operations are not reported under Article 36B of this Chapter is the person who is liable for payment for the fuel consumed by the motor vehicle."

Sec. 2. G.S. 105-449.37(a) reads as rewritten:

"(a) Definitions. -- ~~As used in this Article unless the context clearly requires otherwise:~~ The following definitions apply in this Article:

(1) ~~'Motor carrier' means every~~ Motor carrier. -- Every person, firm, or corporation who operates or causes to be operated on any highway in this State a motor vehicle used, designed, or maintained for transportation of persons or property and (i) having two axles and a gross vehicle weight or registered gross vehicle weight exceeding 26,000 pounds, (ii) having three or more axles regardless of weight, or (iii) used in combination when the weight of the combination exceeds 26,000 pounds gross vehicle weight. The term does not include the United ~~States, the State or its political subdivisions, operators of special mobile equipment as defined in G.S. 20-4.01(44), or nonprofit religious, educational, charitable, or benevolent organizations;~~ States, the State, or a political subdivision of the State.

(1a) ~~'Motor vehicle' means~~ Motor vehicle. -- A motor vehicle as defined in G.S. 20-4.01(23) except that the term does not include special mobile equipment as defined in G.S. 20-4.01(44) or recreational ~~vehicles;~~ vehicles.

(2) ~~'Operations' means operations~~ Operations. -- Operations of all vehicles described in subdivision (1), whether loaded or empty and whether or not operated for ~~compensation; and~~ compensation.

(3) ~~'Secretary' means the~~ Secretary. -- The Secretary of Revenue."

Sec. 3. G.S. 105-449.39, as amended by Section 3 of Chapter 182 of the 1991 Session Laws, reads as rewritten:

"§ *105-449.39. Credit for payment of motor fuel tax.*

Every motor carrier subject to the tax levied by this Article is entitled to a credit for tax paid by the carrier on fuel purchased in the State. A motor carrier who files a quarterly report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the variable cents-per-gallon rate of tax in effect during the quarter for which the credit is claimed. A motor carrier who files an annual report is entitled to a credit at a rate equal to the flat cents-per-gallon rate plus the average of the two variable cents-per-gallon rates of tax in effect during the year for which the credit is claimed. To obtain a credit, the motor carrier must furnish evidence satisfactory to the Secretary that the tax for which the credit is claimed has been paid.

If the amount of a credit to which a motor carrier is entitled for a reporting period exceeds the motor carrier's liability for that reporting period, the excess may, in accordance with rules adopted by the Secretary, be refunded to the motor carrier or carried forward and applied to the motor carrier's tax liability for another reporting period. ~~The~~ Before the Secretary ~~may not allow a refund without auditing~~ allows a motor carrier a refund, the Secretary may audit the motor carrier's records ~~unless~~ or require the motor ~~carrier:~~

~~(1) Has furnished a bond under G.S. 105-449.40; or~~

~~(2) Has complied with this Subchapter and the rules adopted under the Subchapter for at least a one-year period preceding the date the application for a refund is filed.~~

carrier to furnish a bond under G.S. 105-449.40."

Sec. 4. G.S. 105-449.40 reads as rewritten:

"§ *105-449.40. ~~Refunds to motor carriers who give~~ Secretary may require bond.*

~~A motor carrier may give a bond in an amount no less than five hundred dollars ($500.00) nor more than ten thousand dollars ($10,000) payable to the State and conditioned that the motor carrier will pay all taxes due and to become due under this Article. So long as~~

~~the bond remains in force the Secretary may order refunds to the motor carrier in the amounts appearing to be due on applications duly filed by the carrier under G.S. 105-449.39 without first auditing the records of the carrier. Such bond shall be in such form and with such surety or sureties as may be required by the Secretary.~~ (a) Authority. -- The Secretary may require a motor carrier to furnish a bond when any of the following occurs:

(1) The motor carrier fails to file a report within the time required by this Article.

(2) The motor carrier fails to pay a tax when due under this Article.

(3) After auditing the motor carrier's records, the Secretary determines that a bond is needed to protect the State from loss in collecting the tax due under this Article.

(b) Amount. -- A bond required of a motor carrier under this section may not be more than the larger of the following amounts:

(1) Five hundred dollars ($500.00).

(2) Four times the motor carrier's average tax liability or refund for a reporting period.

A bond must be in the form required by the Secretary."

Sec. 5. G.S. 105-449.42A reads as rewritten:

"§ *105-449.42A. Leased motor vehicles.*

(a) Lessor in Leasing Business. -- ~~Except as provided in this section, the lessee of a motor vehicle, and not the lessor of the motor vehicle, is a "motor carrier" for the purposes of this Article.~~ A lessor who is regularly engaged in the business of leasing or renting motor vehicles without drivers for compensation is the motor carrier for a leased or rented motor vehicle unless the lessee of the leased or rented motor vehicle gives the Secretary written notice, by filing a report or otherwise, that the lessee is the motor carrier. In that circumstance, the lessee is the motor carrier for the leased or rented motor vehicle.

Before a lessee gives the Secretary written notice under this subsection that the lessee is the motor carrier, the lessee and lessor must make a written agreement for the lessee to be the motor carrier. Upon request of the Secretary, the lessee must give the Secretary a copy of the agreement.

(b) Independent Contractor. -- ~~A lessor of a motor vehicle who gives written notice, by filing a report or otherwise, to the Secretary that the lessor desires to be taxed as a motor carrier may be treated by the Secretary as a motor carrier with respect to a motor vehicle leased to another by him as well as motor fuel consumed by the leased motor vehicle when the lessor supplies or pays for the motor fuel consumed by the motor vehicle or makes rental or other charges calculated to include the cost of the fuel. A lessee motor carrier may exclude from~~

~~reports made pursuant to this Article a motor vehicle of which he is the lessee if that motor vehicle is leased from a lessor who is a motor carrier pursuant to this section.~~ The lessee of a motor vehicle that is leased from an independent contractor is the motor carrier for the leased motor vehicle unless either of the following applies:

(1) The motor vehicle is leased for fewer than 30 days.

(2) The motor vehicle is leased for at least 30 days and the lessor gives the Secretary written notice, by filing a report or otherwise, that the lessor is the motor carrier.

If either of these circumstances applies, the lessor is the motor carrier for the leased motor vehicle.

Before a lessor gives the Secretary written notice under subdivision (2) that the lessor is the motor carrier, the lessor and lessee must make a written agreement for the lessor to be the motor carrier. Upon request of the Secretary, the lessor must give the Secretary a copy of the agreement.

(c) Liability. -- Subsections (a) and (b) govern the primary liability of lessors and lessees of motor vehicles under this Article. Both the lessor and lessee, however, are jointly and severally liable for compliance with this Article."

Sec. 6. G.S. 105-449.47 reads as rewritten:

"§ *105-449.47. Registration of vehicles.*

A motor carrier may not operate or cause to be operated in this State any vehicle listed in the definition of motor carrier unless both the motor carrier ~~has registered the vehicle~~ and the motor vehicle are registered with the Secretary for purposes of the tax imposed by this ~~Article with the Secretary.~~ Article.

Upon application, the Secretary shall register a motor carrier and shall issue ~~a registration card and~~ at least one identification marker for ~~a vehicle.~~ each motor vehicle operated by the motor carrier. ~~The registration card~~ A copy of the registration of a motor carrier shall be carried in ~~the~~ each motor vehicle ~~for which it was issued~~ operated by the motor carrier when the vehicle is in this State. ~~The~~ An identification marker shall be clearly displayed at all times and shall be affixed to the vehicle for which it was issued in the place and manner designated by the Secretary. ~~Every identification marker issued shall bear a number that corresponds to the number on the registration card issued for the same vehicle. Registration cards~~ Registrations and identification markers required by this section shall be issued on a calendar year basis. The Secretary may renew ~~registration cards and identification markers without issuing new cards and markers.~~ a registration or an identification marker without issuing a new registration or identification marker. All identification markers issued by the Secretary remain the property of the State. The

Secretary may withhold or revoke a registration ~~card and~~ or an identification marker when a motor carrier fails to comply with this Article or Article 36A of this Subchapter."

Sec. 7. G.S. 105-449.49, as amended by Section 6 of Chapter 182 of 1991 Session Laws, reads as rewritten:

"§ *105-449.49. Temporary permits.*

Upon application to the Secretary and payment of a fee of twenty-five dollars ($25.00), a motor carrier may obtain a temporary permit authorizing the carrier to operate a vehicle in the State without registering the vehicle in accordance with G.S. 105-449.47 for not more than 20 days. A motor carrier to whom a temporary permit has been issued may elect not to report its operation of the vehicle during the 20-day period. ~~A motor carrier who files a report for a reporting period in which the carrier paid a temporary permit fee may claim a credit for the amount of the fee. A motor carrier whose operations are exclusively intrastate may obtain a refund of the fee by filing a report for the reporting period in which the fee was paid.~~"

Sec. 8. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 135 **CHAPTER 488**

AN ACT TO REQUIRE A CERTIFIED TRANSPORTER OF USED OIL TO MARK ALL ITS VEHICLES OR CONTAINERS OF USED OIL ON THE VEHICLES WHICH TRANSPORT USED OIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.23 reads as rewritten:

"§ *130A-309.23. Certification of used oil transporters.*

(a) Any person who transports over public highways after 1 January 1992, more than 500 gallons of used oil in any week must be a certified transporter or must be employed by a person who is a certified transporter.

(b) The Department of Transportation shall develop a certification program for transporters of used oil, and shall issue, deny, or revoke certifications authorizing the holder to transport used oil. Certification requirements shall help assure that a used oil transporter is familiar with appropriate rules and used oil management procedures.

(c) The Department of Transportation shall adopt rules governing certification, which shall include requirements for the following:

(1) Registration and annual reporting pursuant to G.S. 130A-309.17.

(2) Evidence of familiarity with applicable State laws and rules governing used oil transportation.

(3) Proof of liability insurance or other means of financial responsibility for any liability which may be incurred in the transport of used oil.

(4) Marking, by the certified transporter of used oil, of all vehicles which transport used oil or all containers of used oil when it is not feasible to mark the vehicle. The mark must clearly identify the certified used oil transporter and clearly indicate that the vehicle is used to transport used oil. The marking must be visible to others travelling on the highway."

Sec. 2. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 289 **CHAPTER 489**

AN ACT TO VALIDATE CERTAIN CONVEYANCES WHERE SEALS WERE OMITTED OR NOTARY WAS NOT QUALIFIED, CERTAIN NOTICES TO CREDITORS OF DECEDENTS WHERE THE DEADLINE FOR SUBMITTING CLAIMS WAS OMITTED, AND CERTAIN FORECLOSURE SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 45-20.1 reads as rewritten:

"*§ 45-20.1. Validation of trustees' deeds where seals omitted.*

All deeds executed prior to ~~April 1, 1989,~~ January 1, 1991, by any trustee or substitute trustee in the exercise of the power of sale vested in him under any deed, deed of trust, mortgage, will, or other instrument in which the trustee or substitute trustee has omitted to affix his seal after his signature are validated."

Sec. 1.1. Article 2 of Chapter 45 of the General Statutes is amended by adding a new section to read:

"*§ 45-20.3. Validation of deeds where seal omitted on power of attorney.*

All deeds and other conveyances executed prior to January 1, 1991, by any attorney-in-fact in the exercise of a power of attorney are valid even though the signature of the principal was not affixed under seal on the instrument creating the power of attorney."

Sec. 2. G.S. 47-51 reads as rewritten:

"*§ 47-51. Official deeds omitting seals.*

All deeds executed prior to ~~April 1, 1989,~~ January 1, 1991, by any sheriff, commissioner, receiver, executor, executrix, administrator, administratrix, or other officer authorized to execute a deed by virtue of his office or appointment, in which the officer has omitted to affix his seal after his signature, shall not be invalid on account of the omission of such seal."

Sec. 3. G.S. 47-53 reads as rewritten:

"*§ 47-53. Probates omitting official seals, etc.*

In all cases where the acknowledgment, private examination, or other proof of the execution of any deed, mortgage, or other instrument authorized or required to be registered has been taken or had by or before any commissioner of affidavits and deeds of this State, or clerk or deputy clerk of a court of record, or notary public of this or any other state, territory, or district, and such deed, mortgage, or other instrument has heretofore been recorded in any county in this State, but such commissioner, clerk, deputy clerk, or notary public has omitted to attach his or her official or notarial seal thereto, or if omitted, to insert his or her name in the body of the certificate, or if omitted, to sign his or her name to such certificate, if the name of such officer appears in the body of said certificate or is signed thereto, or it does not appear of record that such seal was attached to the original deed, mortgage, or other instrument, or such commissioner, clerk, deputy clerk, or notary public has certified the same as under his or her 'official seal,' or 'notarial seal,' or words of similar import, and no such seal appears of record or where the officer uses 'notarial' in his or her certificate and signature shows that 'C.S.C.,' or 'clerk of superior court,' or similar exchange of capacity, and the word 'seal' follows the signature, then all such acknowledgments, private examinations or other proofs of such deeds, mortgages, or other instruments, and the registration thereof, are hereby made in all respects valid and binding. The provisions of this section apply to acknowledgments, private examinations, or proofs taken prior to ~~April 1, 1989;~~ January 1, 1991: Provided, this section does not apply to pending litigation."

Sec. 4. G.S. 47-53.1 reads as rewritten:

"*§ 47-53.1. Acknowledgment omitting seal of notary public.*

Where any person has taken an acknowledgment as a notary public and has failed to affix his seal and such acknowledgment has been otherwise duly probated and recorded then such acknowledgment is hereby declared to be sufficient and valid: Provided this shall apply only to those deeds and other instruments acknowledged prior to ~~April 1, 1989.~~ January 1, 1991."

Sec. 5. G.S. 47-71.1 reads as rewritten:

"§ 47-71.1. Corporate seal omitted prior to ~~April 1, 1989.~~ January 1, 1991.

Any corporate deed, or conveyance of land in this State, made prior to ~~April 1, 1989,~~ January 1, 1991, which is defective only because the corporate seal is omitted therefrom is hereby declared to be a good and valid conveyance by such corporation for all purposes and shall be sufficient to pass title to the property therein conveyed as fully as if the said conveyance were executed according to the provisions and forms of law in force in this State at the date of the execution of such conveyance."

Sec. 6. G.S. 47-108.5 reads as rewritten:

"§ 47-108.5. Validation of certain deeds executed in other states where seal omitted.

All deeds to lands in North Carolina, executed prior to ~~April 1, 1989,~~ January 1, 1991, without seal attached to the maker's name, which deeds were acknowledged in another state, the laws of which do not require a seal for the validity of a conveyance of real property located in that state, and which deeds have been duly recorded in this State, shall be as valid to all intents and purposes as if the same had been executed under seal."

Sec. 7. G.S. 47-108.11 reads as rewritten:

"§ 47-108.11. Validation of recorded instruments where seals have been omitted.

In all cases of any deed, deed of trust, mortgage, lien or other instrument authorized or required to be registered in the office of the register of deeds of any county in this State where it appears of record or it appears that from said instrument, as recorded in the office of the register of deeds of any county in the State, there has been omitted from said recorded or registered instrument the word 'seal,' 'notarial seal' and that any of said recorded or registered instruments shows or recites that the grantor or grantors 'have hereunto fixed or set their hands and seals' and the signature of the grantor or grantors appears without a seal thereafter or on the recorded or registered instrument or in all cases where it appears there is an attesting clause which recites 'signed, sealed and delivered in the presence of,' and the signature of the grantor or grantors appears on the recorded or registered instrument without any seal appearing thereafter or of record, then all such deeds, mortgages, deeds of trust, liens or other instruments, and the registration of same in the office of the register of deeds, are hereby declared to be in all respects valid and binding and are hereby made in all respects valid and binding to the same extent as if the word 'seal' or 'notarial seal' had not been omitted, and the registration and recording of such instruments in the office of the

register of deeds in any county in this State are hereby declared to be valid, proper, legal and binding registrations.

This section shall not apply in any respect to any instrument recorded or registered subsequent to ~~April 1, 1989,~~ January 1, 1991, or to pending litigation or to any such instruments now directly or indirectly involved in pending litigation."

Sec. 8. G.S. 28A-14-1.1(b) reads as rewritten:

"(b) This section applies to all notices published and posted between October 1, 1975, and ~~March 16, 1989,~~ January 1, 1991, except that it does not affect any pending litigation or any litigation instituted within 90 days of ~~March 16, 1989,~~ January 1, 1991."

Sec. 9. G.S. 10-12(d) reads as rewritten:

"(d) This section shall apply to notarial acts prior to ~~April 1, 1989,~~ January 1, 1991."

Sec. 10. G.S. 45-21.47 reads as rewritten:

"*§ 45-21.47. Validation of foreclosure sales when trustee is officer of owner of debt.*

All sales of real property made prior to ~~June 1, 1989,~~ January 1, 1991, under a power of sale contained in a mortgage or deed of trust for which the trustee was an officer, director, attorney, agent, or employee of the owner of all or part of the debt secured by the mortgage or deed of trust are validated and have the same effect as if the trustee had not been an officer, director, attorney, agent, or employee of the owner of the debt unless an action to set aside the foreclosure is commenced within one year after ~~June 1, 1989,~~ January 1, 1991."

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 347 **CHAPTER 490**

AN ACT TO REQUIRE MAMMOGRAM AND PAP SMEAR COVERAGE IN HEALTH AND ACCIDENT INSURANCE POLICIES, IN HOSPITAL OR MEDICAL SERVICES PLANS, AND IN HMO PLANS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"*§ 58-51-57. Coverage for mammograms and pap smears.*

(a) Every policy or contract of accident or health insurance, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued,

renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the policy, contract, or plan shall apply to coverage for pap smears and low-dose screening mammography.

(b) As used in this section, 'low-dose screening mammography' means a radiologic procedure for the early detection of breast cancer provided to an asymptomatic woman using equipment dedicated specifically for mammography, including a physician's interpretation of the results of the procedure.

(c) Coverage for low-dose screening mammography shall be provided as follows:

(1) One or more mammograms a year, as recommended by a physician, for any woman who is at risk for breast cancer. For purposes of this subdivision, a woman is at risk for breast cancer if any one or more of the following is true:
   a. The woman has a personal history of breast cancer;
   b. The woman has a personal history of biopsy-proven benign breast disease;
   c. The woman's mother, sister, or daughter has or has had breast cancer; or
   d. The woman has not given birth prior to the age of 30;

(2) One baseline mammogram for any woman 35 through 39 years of age, inclusive;

(3) A mammogram every other year for any woman 40 through 49 years of age, inclusive, or more frequently upon recommendation of a physician; and

(4) A mammogram every year for any woman 50 years of age or older.

(d) Reimbursement for a mammogram authorized under this section shall be made only if the facility in which the mammogram was performed meets mammography accreditation standards. Mammography accreditation standards shall be those established by the North Carolina Medical Care Commission unless such standards are not in effect, in which case standards established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography shall apply until Medical Care Commission standards become effective. Facilities that do not meet required mammography accreditation standards shall so inform the patient or the patient's legally responsible person prior to performing the mammogram.

(e) Coverage for pap smears shall be provided for pap smears obtained once a year, or more frequently if recommended by a physician. Coverage shall include the examination, the laboratory fee,

and the physician's interpretation of the laboratory results. When the screening pap smear accreditation standards adopted by the North Carolina Medical Care Commission become effective, reimbursement for laboratory fees shall be made only if the laboratory meets those standards. Facilities utilizing services of laboratories that do not meet accreditation standards for screening pap smears shall, prior to performing the pap smear examination, inform the patient or the patient's legally responsible person that such laboratory fees will not be covered."

Sec. 2. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"*§ 58-65-92. Coverage for mammograms and pap smears.*

(a) Every insurance certificate or subscriber contract under any hospital service plan or medical service plan governed by this Article and Article 66 of this Chapter, and every preferred provider contract, policy, or plan as defined and regulated under G.S. 58-50-50 and G.S. 58-50-55, that is issued, renewed, or amended on or after January 1, 1992, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the certificate or contract shall apply to coverage for pap smears and low-dose screening mammography.

(b) As used in this section, 'low-dose screening mammography' means a radiologic procedure for the early detection of breast cancer provided to an asymptomatic woman using equipment dedicated specifically for mammography, including a physician's interpretation of the results of the procedure.

(c) Coverage for low-dose screening mammography shall be provided as follows:

(1) One or more mammograms a year, as recommended by a physician, for any woman who is at risk for breast cancer. For purposes of this subdivision, a woman is at risk for breast cancer if any one or more of the following is true:
   a. The woman has a personal history of breast cancer;
   b. The woman has a personal history of biopsy-proven benign breast disease;
   c. The woman's mother, sister, or daughter has or has had breast cancer; or
   d. The woman has not given birth prior to the age of 30;

(2) One baseline mammogram for any woman 35 through 39 years of age, inclusive;

(3) A mammogram every other year for any woman 40 through 49 years of age, inclusive, or more frequently upon recommendation of a physician; and

(4) A mammogram every year for any woman 50 years of age or older.

(d) Reimbursement for a mammogram authorized under this section shall be made only if the facility in which the mammogram was performed meets mammography accreditation standards. Mammography accreditation standards shall be those established by the North Carolina Medical Care Commission unless such standards are not in effect, in which case standards established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography shall apply until Medical Care Commission standards become effective. Facilities that do not meet required mammography accreditation standards shall so inform the patient or the patient's legally responsible person prior to performing the mammogram.

(e) Coverage for pap smears shall be provided for pap smears obtained once a year, or more frequently if recommended by a physician. Coverage shall include the examination, the laboratory fee, and the physician's interpretation of the laboratory results. When the screening pap smear accreditation standards adopted by the North Carolina Medical Care Commission become effective, reimbursement for laboratory fees shall be made only if the laboratory meets those standards. Facilities utilizing services of laboratories that do not meet accreditation standards for screening pap smears shall, prior to performing the pap smear examination, inform the patient or the patient's legally responsible person that such laboratory fees will not be covered."

Sec. 3. Chapter 58 of the General Statutes is amended by adding the following new section to read:

"*§ 58-67-76. Coverage for mammograms and pap smears.*

(a) Every health care plan written by a health maintenance organization and in force, issued, renewed, or amended on or after January 1, 1992, that is subject to this Article, shall provide coverage for pap smears and for low-dose screening mammography. The same deductibles, coinsurance, and other limitations as apply to similar services covered under the plan shall apply to coverage for pap smears and low-dose screening mammography.

(b) As used in this section, 'low-dose screening mammography' means a radiologic procedure for the early detection of breast cancer provided to an asymptomatic woman using equipment dedicated specifically for mammography, including a physician's interpretation of the results of the procedure.

(c) Coverage for low-dose screening mammography shall be provided as follows:

(1) One or more mammograms a year, as recommended by a physician, for any woman who is determined to be at risk for breast cancer. For purposes of this subdivision, a woman is at risk for breast cancer if any one or more of the following is true:
   a. The woman has a personal history of breast cancer;
   b. The woman has a personal history of biopsy-proven benign breast disease;
   c. The woman's mother, sister, or daughter has or has had breast cancer; or
   d. The woman has not given birth prior to the age of 30;
(2) One baseline mammogram for any woman 35 through 39 years of age, inclusive;
(3) A mammogram every other year for any woman 40 through 49 years of age, inclusive, or more frequently upon recommendation of a physician; and
(4) A mammogram every year for any woman 50 years of age or older.

(d) Reimbursement for a mammogram authorized under this section shall be made only if the facility in which the mammogram was performed meets mammography accreditation standards. Mammography accreditation standards shall be those established by the North Carolina Medical Care Commission unless such standards are not in effect, in which case standards established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography shall apply until Medical Care Commission standards become effective. Facilities that do not meet required mammography accreditation standards shall so inform the patient or the patient's legally responsible person prior to performing the mammogram.

(e) Coverage for pap smears shall be provided for pap smears obtained once a year, or more frequently if recommended by a physician. Coverage shall include the examination, the laboratory fee, and the physician's interpretation of the laboratory results. When the screening pap smear accreditation standards adopted by the North Carolina Medical Care Commission become effective, reimbursement for laboratory fees shall be made only if the laboratory meets those standards. Facilities utilizing services of laboratories that do not meet accreditation standards for screening pap smears shall, prior to performing the pap smear examination, inform the patient or the patient's legally responsible person that such laboratory fees will not be covered."

Sec. 4. G.S. 143B-165 is amended by adding the following new subdivision to read:

"(12) The Commission shall adopt rules, including temporary rules pursuant to G.S. 150B-13, providing for the accreditation of facilities that perform mammography procedures and for laboratories evaluating screening pap smears. Mammography accreditation standards shall address, but are not limited to, the quality of mammography equipment used and the skill levels and other qualifications of personnel who administer mammographies and personnel who interpret mammogram results. The Commission's standards shall be no less stringent than those established by the United States Department of Health and Human Services for Medicare/Medicaid coverage of screening mammography. These rules shall also specify procedures for waiver of these accreditation standards on an individual basis for any facility providing screening mammography to a significant number of patients, but only if there is no accredited facility located nearby. The Commission may grant a waiver subject to any conditions it deems necessary to protect the health and safety of patients, including requiring the facility to submit a plan to meet accreditation standards."

Sec. 5. If House Bill 1037, 1991 Session, is ratified Chapter 58 of the General Statutes is amended by adding the following new section to read:

"*§ 58-50-155. Standard and basic health care plan coverages.*

(a) Notwithstanding G.S. 58-50-125(c), the standard health plan developed and approved under G.S. 58-50-125 shall provide coverage for mammograms and pap smears at least equal to the coverage required by G.S. 58-51-57.

(b) Notwithstanding G.S. 58-50-125(c), in developing and approving the plans under G.S. 58-50-125, the Committee and Commissioner shall give due consideration to cost-effective and life-saving health care services and to cost-effective health care providers. This section shall be effective after the ratification date of H.B. 1037."

Sec. 6. G.S. 58-54-10 is amended by adding the following new subsection to read:

"(e) Notwithstanding coverage provided by Medicare for mammograms and pap smears, every policy in force in this State shall provide coverage at least equal to the coverage required by G.S. 58-51-57."

Sec. 7. Nothing in this act shall apply to specified accident, specified disease, hospital indemnity, or long-term care health insurance policies.

Sec. 8. Section 5 of this act becomes effective January 1, 1992. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 418 **CHAPTER 491**

AN ACT TO RESOLVE INCONSISTENCIES BETWEEN G.S. 8-83 AND G.S. 1A-1, RULES 32 AND 40, REGARDING THE ADMISSION OF DEPOSITIONS AT TRIAL AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION, AND USE OF DEPOSITIONS OF MEMBERS OF THE GENERAL ASSEMBLY AND CONGRESS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 8-83 reads as rewritten:

"*§ 8-83. When deposition may be read on the trial.*

Every deposition taken and returned in the manner provided by law may be read on the trial of the action or proceeding, or before any referee, in the following cases, and not otherwise:

(1) If the witness is dead, or has become insane since the deposition was taken.

(2) If the witness is a resident of a foreign country, or of another state, and is not present at the trial.

(3) If the witness is confined in a prison outside the county in which the trial takes place.

(4) If the witness is so old, sick or infirm as to be unable to attend court.

(5) If the witness is the President of the United States, or the head of any department of the federal government, or a judge, district attorney, or clerk of any court of the United States, and the trial shall take place during the term of such court.

(6) If the witness is the Governor of the State, or the head of any department of the State government, or the president of the University, or the head of any other incorporated college in the State, or the superintendent or any physician in the employ of any of the hospitals for the insane for the State.

(7) If the witness is a justice of the Supreme Court, judge of the Court of Appeals, or a judge, presiding officer, clerk or district attorney of any court of record, and the trial shall take place during the term of such court.

(8) If the witness is a member of the Congress of the United States, or a member of the General Assembly, and the trial shall take place during a ~~session of the body of which he is a member.~~ time that such member is in the service of that body.

(9) Except in actions or proceedings governed by the Rules of Civil Procedure, if ~~If~~ the witness has been duly summoned, and at the time of the trial is out of the State, or is more than seventy-five miles by the usual public mode of travel from the place where the court is sitting, without the procurement or consent of the party offering his deposition.

(10) If the action is pending in a magistrate's court the deposition may be read on the trial of the action, provided the witness is more than 75 miles by the usual public mode of travel from the place where the court is sitting.

(11) Except in actions or proceedings governed by the Rules of Civil Procedure, if ~~If~~ the witness is a physician duly licensed to practice medicine in the State of North Carolina, and resides or maintains his office outside the county in which the action is pending.

If any provision of this section conflicts with the Rules of Civil Procedure, then those Rules shall control in actions or proceedings governed by them."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 455 **CHAPTER 492**

AN ACT TO CONFORM CERTAIN PROVISIONS OF THE WAGE AND HOUR ACT TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 95-25.4 reads as rewritten:

"*§ 95-25.4. Overtime.*

(a) Every employer shall pay each employee who works longer than ~~45~~ 40 hours in any workweek at a rate of not less than time and one half of the regular rate of pay of the employee for those hours in excess of ~~45~~ 40 per ~~week.~~ week; provided that employers of seasonal amusement or recreational establishment employees are required to pay those employees the overtime rate only for hours in excess of 45 per workweek.

(b) Hospital and nursing home employers may elect to pay overtime after eight hours per day or 80 hours in a 14-day work

period, if the employee is notified in advance and is paid not less than one and one-half times the regular rate of pay of the employee for those hours in excess of eight per day or 80 in such 14-day work period."

Sec. 2. G.S. 95-25.5(c) reads as rewritten:

"(c) No youth 14 or 15 years of age may be employed by an employer in any occupation except those determined by the United States Department of Labor to be permitted occupations under the Fair Labor Standards Act; provided, such youths may be employed by employers:

(1) No more than three hours on a day when school is in session for the ~~youth, except that the youth may work up to six hours on the last day of the school week;~~ youth;

(2) No more than eight hours on a day when school is not in session for the youth;

(3) Only between 7 A.M. and 7 P.M., except to 9 P.M. ~~when there is no school for the youth the next day; and~~ during the summer (when school is not in session);

~~(4) No more hours per week than the following:~~

~~Days school in session for the youth~~	~~Weekly hours~~
~~5~~	~~18~~
~~4~~	~~26~~
~~3~~	~~34~~
~~2 or less~~	~~40~~

(4) No more than 40 hours in any one week when school is not in session for the youth;

(5) No more than 18 hours in any one week when school is in session for the youth; and

(6) Only outside school hours.

Notwithstanding the above, enrollees in high school apprenticeships or in work experience and career exploration programs as defined under the Fair Labor Standards Act may work up to 23 hours in any one week when school is in session, any portion of which may be during school hours."

Sec. 3. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 513 **CHAPTER 493**

AN ACT TO CREATE THE MISDEMEANOR OFFENSE OF ETHNIC INTIMIDATION AND TO ADD ETHNIC ANIMOSITY

AS AN AGGRAVATING FACTOR TO BE CONSIDERED IN FELONY SENTENCES.

The General Assembly of North Carolina enacts:

Section 1. Article 52 of Chapter 14 of the General Statutes is amended by adding a new section to read:

"*§ 14-401.14. Ethnic intimidation.*

If a person shall, because of race, color, religion, nationality, or country of origin, assault another person, or damage or deface the property of another person, or threaten to do any such act, he shall be guilty of a misdemeanor punishable by imprisonment up to two years, or a fine, or both."

Sec. 2. G.S. 15A-1340.4(a) reads as rewritten:

"(a) If the sentencing judge imposes a prison term on a person convicted of a felony other than a Class A or Class B felony, he may suspend the sentence and place the convicted felon on probation as provided by Article 82 of this Chapter. If the convicted felon is under 21 years of age at the time of conviction and the sentencing judge elects to impose an active prison term, the judge must either sentence the felon as a committed youthful offender in accordance with Article 3B of Chapter 148 of the General Statutes and subject to the limit on the prison term provided by G.S. 148-49.14, or make a 'no benefit' finding as provided by G.S. 148-49.14 and impose a regular prison term. If the judge imposes a prison term, whether or not the term is suspended, and whether or not he sentences the convicted felon as a committed youthful offender, he must impose the presumptive term provided in this section unless, after consideration of aggravating or mitigating factors, or both, he decides to impose a longer or shorter term, or unless he imposes a prison term pursuant to any plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the presumptive terms for each felony so consolidated, (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated. In imposing a prison term, the judge, under the procedures provided in G.S. 15A-1334(b), may consider any aggravating and mitigating factors that he finds are proved by the preponderance of the evidence, and that are reasonably related to the purposes of sentencing, whether or not such aggravating or mitigating factors are set forth herein, but unless he imposes the term pursuant to a plea arrangement as to sentence under Article 58 of this Chapter, or unless when two or more convictions are consolidated for judgment he imposes a prison term (i) that does not exceed the total of the

presumptive terms for each felony so consolidated, (ii) that does not exceed the maximum term for the most serious felony so consolidated, and (iii) that is not shorter than the presumptive term for the most serious felony so consolidated, he must consider each of the following aggravating and mitigating factors:

(1) Aggravating factors:

a. The defendant induced others to participate in the commission of the offense or occupied a position of leadership or dominance of other participants.

b. The offense was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody.

c. The defendant was hired or paid to commit the offense.

d. The offense was committed to disrupt or hinder the lawful exercise of any governmental function or the enforcement of laws.

e. The offense was committed against a present or former: law enforcement officer, employee of the Department of Correction, jailer, fireman, emergency medical technician, ambulance attendant, justice or judge, clerk or assistant or deputy clerk of court, magistrate, prosecutor, juror, or witness against the defendant, while engaged in the performance of his official duties or because of the exercise of his official duties.

f. The offense was especially heinous, atrocious, or cruel.

g. The defendant knowingly created a great risk of death to more than one person by means of a weapon or device which would normally be hazardous to the lives of more than one person.

h. The defendant held public office at the time of the offense and the offense related to the conduct of the office.

i. The defendant was armed with or used a deadly weapon at the time of the crime.

j. The victim was very young, or very old, or mentally or physically infirm.

k. The defendant committed the offense while on pretrial release on another felony charge.

l. The defendant involved a person under the age of 16 in the commission of the crime.

m. The offense involved an attempted or actual taking of property of great monetary value or damage causing great monetary loss, or the offense involved an unusually large quantity of contraband.

n. The defendant took advantage of a position of trust or confidence to commit the offense.

o. The defendant has a prior conviction or convictions for criminal offenses punishable by more than 60 days' confinement. Such convictions include those occurring in North Carolina courts and courts of other states, the District of Columbia, and the United States, provided that any crime for which the defendant was convicted in a jurisdiction other than North Carolina would have been a crime if committed in this State. Such prior convictions do not include any crime that is joinable, under G.S. Chapter 15A, with the crime or crimes for which the defendant is currently being sentenced.

p. The offense involved the sale or delivery of a controlled substance to a minor.

q. The offense was committed because of the race, color, religion, nationality, or country of origin of another person.

Evidence necessary to prove an element of the offense may not be used to prove any factor in aggravation, and the same item of evidence may not be used to prove more than one factor in aggravation.

The judge may not consider as an aggravating factor the fact that the defendant exercised his right to a jury trial.

(2) Mitigating factors:

a. The defendant has no record of criminal convictions or a record consisting solely of misdemeanors punishable by not more than 60 days' imprisonment.

b. The defendant committed the offense under duress, coercion, threat, or compulsion which was insufficient to constitute a defense but significantly reduced his culpability.

c. The defendant was a passive participant or played a minor role in the commission of the offense.

d. The defendant was suffering from a mental or physical condition that was insufficient to constitute a defense but significantly reduced his culpability for the offense.

e. The defendant's immaturity or his limited mental capacity at the time of commission of the offense significantly reduced his culpability for the offense.

f. The defendant has made substantial or full restitution to the victim.

g. The victim was more than 16 years of age and was a voluntary participant in the defendant's conduct or consented to it.

h. The defendant aided in the apprehension of another felon or testified truthfully on behalf of the prosecution in another prosecution of a felony.
i. The defendant acted under strong provocation, or the relationship between the defendant and the victim was otherwise extenuating.
j. The defendant could not reasonably foresee that his conduct would cause or threaten serious bodily harm or fear, or the defendant exercised caution to avoid such consequences.
k. The defendant reasonably believed that his conduct was legal.
l. Prior to arrest or at an early stage of the criminal process, the defendant voluntarily acknowledged wrongdoing in connection with the offense to a law enforcement officer.
m. The defendant has been a person of good character or has had a good reputation in the community in which he lives.
n. The defendant is a minor and has reliable supervision available.
o. The defendant has been honorably discharged from the United States armed services."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 587 **CHAPTER 494**

AN ACT TO ALLOW ATLANTIC BEACH, CAROLINA BEACH, CASWELL BEACH, HOLDEN BEACH, LONG BEACH, OCEAN ISLE BEACH, SUNSET BEACH, TOPSAIL BEACH, WRIGHTSVILLE BEACH, AND YAUPON BEACH TO REGULATE PERSONAL WATERCRAFT OPERATION, AND TO AUTHORIZE REGULATION OF PERSONAL WATERCRAFT OPERATION IN LAKE NORMAN.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-176.1(a) reads as rewritten:

"(a) A city may adopt ordinances to regulate and control swimming, personal watercraft operation, surfing and littering in the Atlantic Ocean and other waterways adjacent to that portion of the city within its boundaries or within its extraterritorial jurisdiction; provided,

however, nothing contained herein shall be construed to permit any city to prohibit altogether swimming and surfing or to make these activities unlawful."

Sec. 2. Section 1 of this act applies to the Towns of Atlantic Beach, Carolina Beach, Caswell Beach, Holden Beach, Long Beach, Ocean Isle Beach, Sunset Beach, Topsail Beach, Wrightsville Beach, and Yaupon Beach only.

Sec. 3. Section 8 of Chapter 1089 of the 1969 Session Laws, being an act establishing the Lake Norman Marine Commission, is amended by adding a new sentence to read:

"Under authorization of a joint resolution, and subject to the limitations of this section, the Commission may regulate personal watercraft operation in Lake Norman and from its shoreline."

Sec. 4. In addition to other authority granted by law, the Towns of Davidson and Cornelius may regulate personal watercraft operation within their respective corporate limits and extraterritorial jurisdiction in Lake Norman and from its shoreline.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 604 **CHAPTER 495**

AN ACT TO INCREASE THE SURETY BOND TO BE SUBMITTED BY AN APPLICANT FOR A LICENSE AS A MOTOR VEHICLE DEALER, MANUFACTURER, DISTRIBUTION BRANCH, OR FACTORY BRANCH.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-288(e) reads as rewritten:

"(e) Each applicant approved by the Division for license as a motor vehicle dealer, manufacturer, distributor branch, or factory branch shall furnish a corporate surety bond or cash bond or fixed value equivalent thereof in the principal sum of ~~fifteen thousand dollars ($15,000)~~ twenty five thousand dollars ($25,000) and an additional principal sum of ~~five thousand dollars ($5,000)~~ ten thousand dollars ($10,000) for each additional place of business within this State at which motor vehicles are sold. Each application for a license or a renewal of a license shall be accompanied by a list of locations at which the applicant engages in the business of selling motor vehicles in this State. A corporate surety bond shall be approved by the Commissioner as to form and shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Article and Article 15. A cash bond or fixed value equivalent thereof shall be

approved by the Commissioner as to form and terms of deposits as will secure the ultimate beneficiaries of the bond; and such bond shall not be available for delivery to any person contrary to the rules of the Commissioner. Any purchaser of a motor vehicle who shall have suffered any loss or damage by any act of a motor vehicle dealer that constitutes a violation of this Article or Article 15 shall have the right to institute an action to recover against such motor vehicle dealer and the surety. Every licensee against whom such action is instituted shall notify the Commissioner of the action within 10 days after process is served on the licensee. A corporate surety bond shall remain in force and effect and may not be canceled by the surety unless the motor vehicle dealer, manufacturer, distributor branch, or factory branch has terminated the operations of its business nor unless its license has been denied, suspended, or revoked under G.S. 20-294. Such cancellation may be had only upon 30 days' written notice to the Commissioner and shall not affect any liability incurred or accrued prior to the termination of such 30-day period. Provided nothing herein shall apply to a motor vehicle dealer, manufacturer, distributor branch or factory branch which deals only in trailers having an empty weight of 4,000 pounds or less. This subsection shall not apply to manufacturers of, or dealers in, mobile or manufactured homes who furnish a corporate surety bond, cash bond, or fixed value equivalent thereof, pursuant to G.S. 143-143.12."

Sec. 2. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 624 **CHAPTER 496**

AN ACT TO MODIFY THE AUTHORITIES OF MCDOWELL COUNTY, BURKE COUNTY AND FORSYTH COUNTY AND THE MUNICIPALITIES THEREIN TO UNDERTAKE LOCAL DEVELOPMENT ACTIVITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 158-7.1 reads as rewritten:

"§ *158-7.1. Local development.*

(a) Each county and city in this State is authorized to make appropriations for the purposes of aiding and encouraging the location of manufacturing enterprises, making industrial surveys and locating industrial and commercial plants in or near such city or in the county; encouraging the building of railroads or other purposes which, in the discretion of the governing body of the city or of the county commissioners of the county, will increase the population, taxable

property, agricultural industries and business prospects of any city or county. These appropriations may be funded by levy of property taxes pursuant to G.S. 153A-149 and ~~160A-209 and by~~ G.S. 160A-209, by the allocation of general fund and utility fund revenues, and by the allocation of other revenues ~~whose use is not otherwise restricted by law.~~ unless the use of the other revenues for local development purposes has been expressly prohibited by law.

(b) A county or city may undertake the following specific economic development activities. (This listing is not intended to limit by implication or otherwise the grant of authority set out in subsection (a) of this section). The activities listed in this subsection (b) may be funded by the levy of property taxes pursuant to G.S. 153A-149 and G.S. 160A-209 and by the allocation of other revenues whose use is not otherwise restricted by law.

(1) A county or city may acquire and develop land for an industrial park, to be used for manufacturing, assembly, fabrication, processing, warehousing, research and development, office use, or similar industrial or commercial purposes. A county may acquire land anywhere in the county, including inside of cities, for an industrial park, while a city may acquire land anywhere in the county or counties in which it is located. A county or city may develop the land by installing utilities, drainage facilities, street and transportation facilities, street lighting, and similar facilities; may demolish or rehabilitate existing structures; and may prepare the site for industrial or commercial uses. A county or city may engage in site preparation for industrial properties or facilities, whether the industrial property or facility is publicly or privately owned. A county or city may convey property located in an industrial park pursuant to subsection (d) of this section.

(2) A county or city may acquire, assemble, and hold for resale property that is suitable for industrial or commercial use. A county may acquire such property anywhere in the county, including inside of cities, while a city may acquire such property inside the city or, if the property will be used by a business that will provide jobs to city residents, anywhere in the county or counties in which it is located. A county or city may convey property acquired or assembled pursuant to this paragraph pursuant to subsection (d) of this section.

(3) A county or city may acquire options for the acquisition of property that is suitable for industrial or commercial use. The county or city may assign such an option, following

such procedures, for such consideration, and subject to such terms and conditions as the county or city deems desirable.

(4) A county or city may acquire or construct one or more 'shell buildings', which are structures of flexible design adaptable for use by a variety of industrial or commercial businesses. A county or city may convey or lease a shell building or space in a shell building pursuant to subsection (c) of this section.

(5) A county or city may extend or may provide for or assist in the extension of utility services to an industrial facility, whether the utility is publicly or privately owned.

(6) A county or city may extend or may provide for or assist in the extension of water and sewer lines to industrial properties or facilities, whether the industrial property or facility is publicly or privately owned.

(c) Any appropriation or expenditure pursuant to subsection (b) of this section must be approved by the county or city governing body after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held. The notice shall describe the interest to be acquired, the proposed acquisition cost of such interest, the governing body's intention to approve the acquisition, the source of funding for the acquisition and such other information needed to reasonably describe the acquisition.

(d) A county or city may lease or convey interests in real property held or acquired pursuant to subsection (b) of this section in accordance with the procedures of this subsection (d). A county or city may convey or lease interests in property by private negotiation and may subject the property to such covenants, conditions, and restrictions as the county or city deems to be in the public interest or necessary to carry out the purposes of this section. Any such conveyance or lease must be approved by the county or city governing body, after a public hearing. The county or city shall publish notice of the public hearing at least 10 days before the hearing is held; the notice shall describe the interest to be conveyed or leased, the value of the interest, the proposed consideration for the conveyance or lease, and the governing body's intention to approve the conveyance or lease. Before such an interest may be conveyed, the county or city governing body shall determine the fair market value of the interest, subject to whatever covenants, conditions, and restrictions the county or city proposes to subject it to; the consideration for the conveyance may not be less than the value so determined.

(e) All appropriations and expenditures pursuant to subsections (b) and (c) of this section shall be subject to the provisions of the Local Government Budget and Fiscal Control Acts of the North Carolina

General Statutes, respectively, for cities and counties. The budget format for each such governing body shall make such disclosures in such detail as the Local Government Commission may by rule and regulation direct.

(f) All appropriations and expenditures pursuant to subsections (b) and (c) of this section shall be subject to the following limitations: No county or city shall have an aggregate investment outstanding at any one time which exceeds one-half of one percent (0.5%) of the outstanding assessed property tax valuation for the governing body as of January 1 of each year, beginning January 1, 1986.

(g) Repealed by Session Laws 1989, c. 374, s. 1."

Sec. 2. This act applies to McDowell County, Burke County and Forsyth County and the municipalities therein only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 663 **CHAPTER 497**

AN ACT TO REWRITE THE LAW RELATING TO SUPPLEMENTAL RETIREMENT FUNDS FOR FIREMEN IN THE CITY OF ROCKY MOUNT TO PROVIDE A SUPPLEMENTAL RETIREMENT FUND FOR THE FIREMEN.

The General Assembly of North Carolina enacts:

Section 1. Chapter 434 of the 1969 Session Laws, as amended by Chapter 498 of the 1983 Session Laws, is rewritten to read:

"Section 1. *Supplemental Retirement Fund created.* The Board of Trustees of the Local Firemen's Relief Fund of the City of Rocky Mount established in accordance with G.S. 58-84-30, shall create and maintain a separate fund, the Rocky Mount Supplemental Retirement Fund, and shall maintain books of account for the Fund, separate from the books of account of the Local Firemen's Relief Fund. The Board of Trustees shall pay into the Supplemental Retirement Fund the funds prescribed by this act.

Sec. 2. *Transfers of Funds and Disbursements.* Notwithstanding the provisions of G.S. 58-84-35, the Board of Trustees shall:

(1) Prior to July 1, 1991, transfer to the Supplemental Retirement Fund all funds, including earnings on investments, of the Local Firemen's Relief Fund in excess of twenty-five thousand dollars ($25,000);

(2) At any time when the amount of funds in the Local Firemen's Relief Fund shall, by reason of disbursements authorized by G.S. 58-84-35, be less than twenty-five

thousand dollars ($25,000), transfer from the Supplemental Retirement Fund to the Local Firemen's Relief Fund an amount sufficient to maintain in Local Firemen's Relief Fund the sum of twenty-five thousand dollars ($25,000);

(3) As soon as practicable after July 1 of each year, but in no event later than December 31, distribute the sum of (i) the annual funds paid to the Local Firemen's Relief Fund by authority of G.S. 58-84-25, (ii) the income earned in the preceding fiscal year upon investments of funds belonging to the Local Firemen's Relief Fund and (iii) the income earned in the preceding fiscal year upon investments of funds belonging to the Supplemental Retirement Fund as supplemental retirement benefits in accordance with Section 3 of this act. Any funds not paid out as benefits shall become part of the Supplemental Retirement Fund.

Sec. 3. *Supplemental Retirement Benefits.* (a) Any retired full-time fireman of the City who retires subsequent to July 1, 1991, who is 55 years of age or older and who has 20 or more years of creditable service in the Local Governmental Employees' Retirement System as a City fireman, any retired full-time fireman of the City who retired subsequent to July 1, 1969, but before July 1, 1991, who has 20 or more years of service as a City fireman, and any retired full-time fireman of the City who retired prior to July 1, 1969, regardless of length of service, is entitled to and shall receive an annual supplemental benefit equal to one share for each full year of service as a City fireman. No retired full-time fireman is entitled to or shall receive in any year an annual benefit in excess of one thousand dollars ($1,000).

(b) Any retired volunteer fireman of the City who retires subsequent to July 1, 1991, who is 55 years of age or older and who has 20 or more years of creditable volunteer service as a City fireman, any retired volunteer fireman of the City who retired subsequent to July 1, 1969 but before July 1, 1991, who has 20 or more years of creditable volunteer service as a City fireman, and any retired volunteer fireman of the City who retired prior to July 1, 1969, regardless of length of service, is entitled to and shall receive an annual supplemental benefit equal to seven-tenths (7/10ths) of one share for each full year of service as a volunteer fireman of the City. No retired volunteer fireman shall be entitled to or receive in any year an annual benefit in excess of seven hundred dollars ($700.00).

(c) Any former full-time fireman of the City who is not otherwise entitled to supplemental retirement benefits under subsection (a) of this section is nevertheless entitled to these benefits in any fiscal year

in which the Board of Trustees makes the following written findings of fact:

(1) That he initially retired from his position as a fireman because of his inability, by reason of sickness or injury, to perform the normal duties of an active fireman;

(2) That, within 30 days prior to or following his initial retirement as a fireman, at least two physicians licensed to practice medicine in North Carolina certified that he was at that time unable, by reason of sickness or injury, to perform the normal duties of an active fireman;

(3) That, at the time of his initial retirement as a fireman, there was not available to him in the fire department or any other department of the City a position of employment the normal duties of which he was capable of performing;

(4) That, since the preceding July 1, at least two physicians licensed to practice medicine in North Carolina have certified that he remains unable, by reason of sickness or injury, to perform the normal duties of an active fireman; and

(5) That, there is not available to him in the fire department or in any other department of the City, a position of employment the normal duties of which he is capable of performing.

The Board of Trustees, after initially making the findings of fact specified in subdivisions (1), (2), and (3) of this subsection need not specify these findings in subsequent fiscal years.

Sec. 4. *Intention.* It is the intention of Section 3 of this act to authorize the disbursement as supplemental retirement benefits only from the income deriving in any fiscal year from funds received pursuant to subdivision (3) of Section 2 of this act.

Sec. 5. *Investment of Funds.* The Board of Trustees shall invest any funds, either of the Local Firemen's Relief Fund or of the Supplemental Retirement Fund, in one or more of the investments named in or authorized by G.S. 159-30, and in accordance with its provisions.

Sec. 6. *Bond of Treasurer.* The Board of Trustees shall bond the Treasurer of the Supplemental Retirement Fund with a good and sufficient bond, in an amount at least equal to the amount of funds in his control, payable to the Board of Trustees, and conditioned upon the faithful performance of his duties. This bond shall be in lieu of the bond required by G.S. 58-84-30. The Board of Trustees shall pay from the Supplemental Retirement Fund the premiums of the bond of the Treasurer.

Sec. 7. None of the provisions of this act shall create a liability for the Rocky Mount Firemen's Supplemental Retirement Fund or for the State of North Carolina unless sufficient current assets are available in the Fund to pay fully for the liability.

Sec. 8. If any provisions of this act are declared invalid by a court of competent jurisdiction, the invalidity shall not affect other provisions that can be given effect without the invalid provision, and to this end the provisions of this act are declared to be severable.

Sec. 9. All laws and clauses of laws in conflict with this act are repealed."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 667 **CHAPTER 498**

AN ACT TO REQUIRE AN APPLICANT FOR A PERMIT FOR DISPOSAL OF WASTE BY LAND APPLICATION TO NOTIFY EACH CITY AND COUNTY GOVERNMENT WITH JURISDICTION OVER THE LAND INVOLVED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.1(d) reads as rewritten:

"(d) Applications and Permits for Sewer Systems, Sewer System Extensions and Pretreatment Facilities, Land Application of Waste, and for Wastewater Treatment Facilities Not Discharging to the Surface Waters of the State.

(1) All applications for new permits and for renewals of existing permits for sewer systems, sewer system extensions and for extensions, disposal ~~systems~~ systems, and for land application of waste, or treatment works which do not discharge to the surface waters of the State, and all permits or renewals and decisions denying any application for permit or renewal shall be in writing. The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an application to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit, including a renewal of a permit, within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved. Permits and renewals issued in approving

such facilities pursuant to this subsection ~~(d)~~ shall be effective until the date specified therein or until rescinded unless modified or revoked by the Commission. Local governmental units to whom pretreatment program authority has been delegated shall establish, maintain, and provide to the public, upon written request, a list of pretreatment applications received.

(2) An applicant for a permit to dispose of petroleum contaminated soil by land application shall give written notice that he intends to apply for such a permit to each city and county government having jurisdiction over any part of the land on which disposal is proposed to occur. The Commission shall not accept such a permit application unless it is accompanied by a copy of the notice and evidence that the notice was sent to each such government by certified mail, return receipt requested. The Commission may consider, in determining whether to issue the permit, the comments submitted by local governments."

Sec. 2. This act becomes effective 1 October 1991 and applies to all applications for permits made on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 674 **CHAPTER 499**

AN ACT TO MERGE THE TOWNS OF JONESVILLE AND ARLINGTON IN YADKIN COUNTY, SUBJECT TO A REFERENDUM.

The General Assembly of North Carolina enacts:

Section 1. (a) The Yadkin County Board of Elections shall conduct an election on August 13, 1991, for the purpose of submitting to the qualified voters of the area described in Section 2.1 of the Charter of Jonesville-Arlington contained in Section 2 of this act, the question of whether the Towns of Jonesville and Arlington shall be merged and their obligations assumed by the merged entity. Registration for the election shall be conducted in accordance with G.S. 163-288.2.

(b) In the election, the question on the ballot shall be:

"[] FOR merger of the Towns of Arlington and Jonesville and the assumption of their obligations by the merged entity.

[] AGAINST merger of the Towns of Arlington and Jonesville and the assumption of their obligations by the merged entity."

(c) In the election, if a majority of the votes cast in each of the respective Towns of Jonesville and Arlington are "FOR merger of the Towns of Arlington and Jonesville and the assumption of their obligations by the merged entity" then Sections 2, and 4 through 7 of this act become effective as set forth in Section 9 of this act. Otherwise, Sections 2, and 4 through 7 of this act do not become effective.

Sec. 2. The following constitutes the Charter of the Town of Jonesville-Arlington, being the merged entity of the Towns of Arlington and Jonesville:

"CHARTER OF THE TOWN OF JONESVILLE-ARLINGTON.

"ARTICLE I. INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation and General Powers.* The inhabitants of the former Town of Jonesville and the inhabitants of the former Town of Arlington are a body corporate and politic under the name of 'The Town of Jonesville-Arlington' (also referred to as the 'Town') until that name is changed in accordance with law. Under that name they have all powers, duties, rights, privileges and immunities conferred and imposed upon municipal corporations by the general law of the State.

"ARTICLE II. CORPORATE BOUNDARIES.

"Sec. 2.1. *Town Boundaries.* The corporate limits of the Town of Jonesville-Arlington consist of all of the territory that was within the corporate limits of the Town of Arlington and all of the territory that was within the corporate limits of the Town of Jonesville on the date of ratification of the act establishing this Charter. An official map of the Town, showing the current boundaries, as they may be changed from time to time in accordance with law, is maintained permanently in the office of the Town Clerk and is available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Yadkin County Register of Deeds and the appropriate boards of elections.

"ARTICLE III. GOVERNING BODY.

"Sec. 3.1. *Mayor and Town Council.* The Mayor and the Town Council constitute the governing body of the Town.

"Sec. 3.2. *Town Council; Composition; Terms of Office.* The Council is composed of six members who reside in the respective districts as provided in Article IV of this Charter but who are elected by all the qualified voters of the Town for terms of four years or until their successors are elected and qualified.

"Sec. 3.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the Town for a term of two years or until a successor is elected and qualified.

"ARTICLE IV. ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of the State. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 4.2. *Election of Town Council.* For purposes of electing members of the Town Council, the Town is divided into two districts, one district on each side of Highway 21. Three Council members shall be elected from each district. Council members shall reside in the district from which they are elected. All members shall be elected to serve staggered four-year terms.

"ARTICLE V. ADMINISTRATION.

"Sec. 5.1. *Town to Operate Under Council-Manager Plan.* The Town operates under the council-manager form of government in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes."

Sec. 3. (a) Filing for election of officials of the Towns of Arlington and Jonesville for the 1991 regular municipal election shall take place as required by law. If the referendum provided for in Section 1 of this act results in merger of the two Towns, then the 1991 election for the two Towns is cancelled, and any terms of office of the elected officials of the two Towns that would have expired are extended until June 30, 1992. There shall be a special filing period commencing upon certification of the election results and ending at 5:00 p.m. on the tenth business day after the date of certification, for candidacies for Mayor and the governing board of the merged Town for an election to be held in November of 1991. Six council members shall be elected. For purposes of the election, the Town is divided into two districts, one on each side of Highway 21. Three Council members shall be elected from each district. The three highest vote getters shall be elected to four-year terms and the next three highest vote getters shall be elected to two-year terms. G.S. 163-125 does not apply in the case of any officer of either Town seeking office in the merged Town.

(b) The governing body of the merged Town, if elected as set forth in subsection (a) of this section shall have its first organizational meeting on June 30, 1992, which is the effective date of the merger provided for in this act. Between the date that the officers are elected and qualified and June 30, 1992, the governing bodies of the two Towns may meet separately or jointly to discuss Town business and take necessary action on Town matters, including preparation of a budget for fiscal year 1992-93, and may, by adopting concurrent ordinances and otherwise following the procedures set forth in Part 4

of Article 5 of Chapter 160A of the General Statutes, change the name of the merged Town. Meetings of the governing bodies during this period are subject to all applicable notice and meeting procedures required by general law.

Sec. 4. The governing body of the merged Town, if elected as set forth in Section 3 of this act may, at its first organizational meeting on June 30, 1992, or at any time thereafter, amend the Charter of the Town of Jonesville-Arlington to change the name of the merged Town pursuant to the procedure set forth in Part 4 of Article 5 of Chapter 160A of the General Statutes.

Sec. 5. (a) All property, real, personal and mixed, including accounts receivable, belonging to the former Town of Arlington or Jonesville shall vest in, belong to, and be the property of the Town of Jonesville-Arlington. The governing bodies of the Towns of Jonesville and Arlington are authorized and directed to take such actions and to execute such documents as will carry into effect the provisions and the intent of this section.

(b) All judgments, liens, rights of liens, and causes of action of any nature in favor of the former Town of Arlington or Jonesville shall vest in and remain and inure to the benefit of the Town of Jonesville-Arlington.

(c) All taxes, assessments, water or sewer charges, and any other charges or fees, owing to the former Town of Arlington or Jonesville shall be owed to and collected by the Town of Jonesville-Arlington.

(d) All actions, suits, and proceedings pending against or having been instituted by the former Town of Arlington or Jonesville shall not be abated by this act or by the merger provided herein, but shall be continued and completed in the same manner as if merger had not occurred, and the Town of Jonesville-Arlington shall be a party to all such actions, suits, and proceedings in the place and stead of the former Town of Arlington or Jonesville and shall pay or cause to be paid any judgments rendered against the former Town of Arlington or Jonesville in any such actions, suits, or proceedings. No new process need be served in any such action, suit, or proceeding.

(e) All obligations of the former Town of Arlington or Jonesville, including outstanding indebtedness, shall be assumed by the Town of Jonesville-Arlington, and all such are hereby constituted obligations of the Town of Jonesville-Arlington, and the full faith and credit of the Town of Jonesville-Arlington shall be deemed to be pledged for the punctual payment of the principal of and interest on all general obligation bonds and bond anticipation notes of the former Town of Arlington or Jonesville, and all the taxable property located

in the former Town of Arlington or Jonesville shall be subject to taxation by the Town of Jonesville-Arlington for such payment.

(f) All ordinances of the former Town of Arlington or Jonesville and the Town of Jonesville-Arlington shall continue in full force and effect within the area to which they apply at the time of ratification of this act as ordinances of the Town of Jonesville-Arlington until June 30, 1993, unless otherwise provided by the governing body of the Town of Jonesville-Arlington.

(g) All franchises heretofore granted by the former Town of Arlington or Jonesville that are still in force shall continue as valid franchises of the Town of Jonesville-Arlington for the purposes granted within the area comprising the former Town of Arlington or Jonesville.

(h) No person employed by either the former Town of Arlington or Jonesville shall be terminated solely due to the merger provided for in this act.

(i) The Towns of Arlington and Jonesville are hereby abolished.

(j) All references to the "Town of Jonesville-Arlington" are references to the merged entity established under this act. In the event that the name of the merged entity is changed as provided in Section 3(b) or Section 4 of this act, the new name shall be substituted for and shall have the same effect as the name "Town of Jonesville-Arlington" wherever used in this act.

Sec. 6. Chapter 365 of the 1901 Session Laws, being the Charter of Jonesville, and the Charter of Arlington as adopted by the Municipal Board of Control, having served the purposes for which they were enacted, or having been consolidated into this act are repealed.

Sec. 7. This act does not repeal, modify, or in any manner affect any acts validating, confirming, approving, or legalizing official proceedings, actions, contracts, or obligations of any kind of the Town of Jonesville or of the Town of Arlington.

Sec. 8. If any provision of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 9. (a) Sections 2, and 4 through 7 of this act become effective only if the election held under Section 1 of this act results in merger of the Towns of Arlington and Jonesville as provided in Section 1(c) of this act, and in that event, Sections 2, and 4 through 7 become effective June 30, 1992. The remainder of this act is effective upon ratification.

(b) If a joint resolution adopted by the governing bodies of the Towns of Arlington and Jonesville, or by a study commission

established under Article 20 of Chapter 153A of the General Statutes, directed or requested the Yadkin County Board of Elections to take actions prior to the ratification of this act in preparation for the August 13, 1991, election provided for in Section 1 of this act, any actions taken by the Yadkin County Board of Elections for that purpose are validated. The Yadkin County Board of Elections may alter the timetable established in Chapter 163 of the General Statutes as necessary to hold the August 13, 1991, election provided for in Section 1 of this act.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 702 **CHAPTER 500**

AN ACT CONCERNING REDISTRICTING FOR LOCAL ELECTIONS IN ROBESON COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The County of Robeson may increase from seven to not more than nine the number of members of the Robeson County Board of Commissioners, and the number of Board of Commissioner electoral districts, in redefining its Commissioner electoral districts in accordance with the provisions of G.S. 153A-22.

Sec. 2. The nomination, election, and length of term of the additional Commissioners authorized by this act shall be in accordance with the provisions of Chapter 289 of the 1919 Session Laws.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 719 **CHAPTER 501**

AN ACT TO GRANT TO MUNICIPALITIES CERTAIN POWERS AUTHORIZED BY SECTION 13 OF ARTICLE V OF THE CONSTITUTION OF NORTH CAROLINA.

Whereas, Article V of the Constitution of North Carolina was amended on November 25, 1986, by adding a Section 13 entitled "Seaport and Airport Facilities"; and

Whereas, that Section granted to the General Assembly the power to enact general laws granting to the State, counties, municipalities, and other State and local governmental entities all powers useful in connection with the development of new and existing seaports and

airports and authorizing those public bodies to perform certain specified activities; and

Whereas, the General Assembly recognizes that the following powers would be useful in connection with the development of new and existing airports and should be granted to municipalities; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 63-53 reads as rewritten:

"*§ 63-53. Specific powers of municipalities operating airports.*

In addition to the general powers in this Article conferred, and without limitation thereof, a municipality which has established or may hereafter establish airports, restricted landing areas or other air navigation facilities, or which has acquired or set apart or may hereafter acquire or set apart real property for such purpose or purposes is hereby authorized:

(1) To vest authority for the construction, enlargement, improvement, maintenance, equipment, operation and regulation thereof in an officer, a board or body of such municipality by ordinance or resolution which shall prescribe the powers and duties of such officer, board or body. The expense of such construction, enlargement, improvement, maintenance, equipment, operation and regulation shall be a responsibility of the municipality.

(2) To adopt and amend all needful rules, regulations and ordinances for the management, government and use of any properties under its control whether within or without the territorial limits of the municipality; to appoint airport guards or police with full police powers; to fix by ordinance, penalties for the violation of said ordinances and enforce said penalties in the same manner in which penalties prescribed by other ordinances of the municipality are enforced. It may also adopt ordinances designed to safeguard the public upon or beyond the limits of private airports or landing strips within such municipality or its police jurisdiction against the perils and hazards of instrumentalities used in aerial navigation. Such ordinances shall be published as provided by general law or the charter of the municipality for the publication of similar ordinances. They must conform to and be consistent with the laws of this State and shall be kept in conformity, as nearly as may be, with the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder and rules and standards issued from time to time pursuant thereto.

(3) To lease such airports or other air navigation facilities, or real property acquired or set apart for airport purposes, to private parties, to any municipal or State government or to the national government, or to any department of either thereof, for operation; to lease to private parties, to any municipal or State government or to the national government, or any department of either thereof, for operation or use consistent with the purpose of this Article, space, area, improvements, or equipment on such airports; to sell any part of such airports, other air navigation facilities or real property to any municipal government, or to the United States or to any department or instrumentality thereof, for aeronautical purposes or purposes incidental thereto, and to confer the privileges of concessions of supplying upon its airports goods, commodities, things, services and facilities; provided that in each case in so doing the public is not deprived of its rightful, equal, and uniform use thereof.

(4) To sell or lease any property, real or personal, acquired for airport purposes and belonging to the municipality, which, in the judgment of its governing body, may not be required for aeronautic purposes in accordance with the laws of this State or the provisions of the charter of the municipality governing the sale or leasing of similar municipally owned property.

(5) To determine the charge or rental for the use of any properties under its control and the charges for any services or accommodations and the terms and conditions under which such properties may be used, provided that in all cases the public is not deprived of its rightful, equal, and uniform use of such property. Charges shall be reasonable and uniform for the same class of service and established with due regard to the property and improvements used and the expense of operation to the municipality. The municipality shall have and may enforce liens as provided by law for liens and enforcement thereof, for repairs to or improvement or storage or care of any personal property, to enforce the payment of any such charges.

(6) To engage, on an airport, in commercial and industrial land development projects which relate to, develop, or further airborne commerce and cargo and passenger traffic, and, in connection with any project, to improve real estate on an airport and lease that improved real estate to public or

private commercial and industrial enterprises, or contract with others to do so.

~~(6)~~ (7) To exercise all powers necessarily incidental to the exercise of the general and special powers herein created."

Sec. 2. This act provides additional powers and shall not be regarded as limiting powers conferred by other laws.

Sec. 3. If any provision of this act, or any application of this act, is held invalid, the invalidity shall not affect other provisions or applications of this act, and to that end the provisions of this act are severable.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 760 **CHAPTER 502**

AN ACT TO AUTHORIZE CERTAIN MUNICIPALITIES TO SEND ONE ITEMIZED BILL FOR SOLID WASTE, WATER, AND SEWAGE SERVICES, AND TO PROVIDE FOR TERMINATION OF SERVICES FOR NONPAYMENT.

The General Assembly of North Carolina enacts:

Section 1. A city may provide that any fee imposed pursuant to G.S. 160A-314 for the purpose of G.S. 160A-311(2), 160A-311(3), and 160A-311(6) may be billed together in one itemized statement. The city council may provide by ordinance the order in which partial payments are to be applied among services. In the case of nonpayment within a period of not less than thirty (30) days, the city may terminate any or all such service for which full payment has not been made.

Sec. 2. This act applies only to the Town of Angier, the Town of Erwin, the Town of Lillington, and the City of Dunn.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 764 **CHAPTER 503**

AN ACT TO AUTHORIZE THE CITY AND COUNTY OF DURHAM TO ALLOW ZONING DENSITY BONUSES IN PROJECTS CONTAINING SPECIFIED AMOUNTS OF LOW AND MODERATE INCOME HOUSING.

The General Assembly of North Carolina enacts:

Section 1. Chapter 671 of the 1975 Session Laws, being the Charter of the City of Durham, is amended by adding a new section to read:

"Sec. 94.2. *Low and Moderate Income Housing; Density Bonuses.* -- (a) The City Council may provide for the granting of density bonuses in one or more zoning districts in which residential uses are permitted, or provide other incentives of value to a developer of housing within the city and its extraterritorial zoning jurisdiction (if any), if the developer agrees to construct at least fifteen percent (15%) of the total housing units within the development for persons and families of low and moderate income. The size of the density bonus may vary with the percentage of housing units constructed within the development for persons or families of low and moderate income.

(b) The City Council may provide for the enforcement of a developer's commitment to provide low and moderate income housing by ordinance or through the adoption of rules and regulations. Such ordinance or rules and regulations may require the developer to record restrictive covenants applicable to the property, to convey real estate interests in the property, to enter into binding contracts satisfactory to the city or to take any other lawful action prescribed by the city. The city may prescribe the period of time during which the developer's commitment shall be binding.

(c) When used in this section, the following words or terms have the meanings indicated:

(1) 'Density bonus' means an increase in the number of housing units allowed on the tract of land upon which the development is located, when compared to the maximum number of housing units which would be allowed on the tract of land in the absence of the density bonus.

(2) 'Low and moderate income' has the meaning prescribed by regulations of the United States Department of Housing and Urban Development applicable to the City of Durham's metropolitan area. In the absence of such regulations, the term 'low and moderate income' shall have the meaning prescribed by the City Council by ordinance or resolution. The term 'low and moderate income' shall also be construed to mean low or moderate income."

Sec. 2. In addition to the other authorization granted by law, Durham County may provide density bonuses in projects containing low and moderate income housing under the provisions:

(a) The County Board of Commissioners may provide for the granting of density bonuses in one or more zoning districts in which residential uses are permitted, or provide other incentives of value to a developer of housing within the county and its extraterritorial zoning

jurisdiction (if any), if the developer agrees to construct at least fifteen percent (15%) of the total housing units within the development for persons and families of low and moderate income. The size of the density bonus may vary with the percentage of housing units constructed within the development for persons or families of low and moderate income.

(b) The County Board of Commissioners may provide for the enforcement of a developer's commitment to provide low and moderate income housing by ordinance or through the adoption of rules and regulations. Such ordinance or rules and regulations may require the developer to record restrictive covenants applicable to the property, to convey real estate interests in the property, to enter into binding contracts satisfactory to the county or to take any other lawful action prescribed by the county. The county may prescribe the period of time during which the developer's commitment shall be binding.

(c) When used in this section, the following words or terms have the meanings indicated:

(1) "Density bonus" means an increase in the number of housing units allowed on the tract of land upon which the development is located, when compared to the maximum number of housing units which would be allowed on the tract of land in the absence of the density bonus.

(2) "Low and moderate income" has the meaning prescribed by regulations of the United States Department of Housing and Urban Development applicable to the County of Durham. In the absence of such regulations, the term "low and moderate income" shall have the meaning prescribed by the County Board of Commissioners by ordinance or resolution. The term "low and moderate income" shall also be construed to mean low or moderate income.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 801 **CHAPTER 504**

AN ACT TO MODIFY THE STATUTORY AUTHORITY OF STANLY COUNTY TO REGULATE THE SUBDIVISION OF LAND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-335, as amended by Chapter 930 of the 1987 Session Laws, reads as rewritten:

"*§ 153A-335. 'Subdivision' defined.*

For purposes of this Part, 'subdivision' means all divisions of a residentially zoned ~~parcel or lot of record existing at the time of passage of the county subdivision ordinance where 10 or more lots or parcels (including residual land of the original parcel) have been or will be created.~~ original parcel or lot of record existing as of January 1, 1989, where 10 or more lots or parcels (not including residual land of the original parcel or lot of record) have been or will be created. Any subsequent conveyance of residentially zoned land from an original parcel or lot of record effective January 1, 1989, by a recorded deed, whether recorded prior to or subsequent to the ratification of this section, conveying more than 10 acres of land shall also be deemed an original parcel or lot of record as hereinbefore defined. The following shall not be included within this definition nor be subject to any regulations enacted pursuant to this Part:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the county as shown in its subdivision regulations;

(2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening streets; and

(4) Divisions of any land to be sold, leased or used for commercial or industrial purposes, which is commercially or industrially zoned by the county zoning ordinance at the time of division."

Sec. 2. This act applies to Stanly County only.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 837 **CHAPTER 505**

AN ACT TO STRENGTHEN LAWS PROHIBITING THE USE OF POLITICAL INFLUENCE CONCERNING STATE EMPLOYMENT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-14 reads as rewritten:

"*§ 126-14. Promise or threat to obtain political contribution or support.*

(a) It is unlawful for a State employee or a person appointed to State office, other than elective office or office on a board, commission, committee, or council whose function is advisory only, whether or not subject to the Personnel Act, to coerce:

(1) a State employee subject to the Personnel Act,

(2) a probationary State employee, ~~or~~

(3) a temporary State employee, or

(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of his voter registration by threatening ~~him with~~ that ~~employment termination~~ change in employment status or discipline or ~~by promising~~ preferential personnel treatment~~.~~ will occur with regard to a person listed in subdivisions (1) through (4).

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee who without probable cause falsely accuses a State employee or a person appointed to State office of violating this section shall be subject to discipline or ~~termination~~ change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

Sec. 2. G.S. 126-14.1 reads as rewritten:

"*§126-14.1. Threat to obtain political contribution or support.*

(a) It is unlawful for any person to coerce:

(1) a State employee subject to the Personnel Act,

(2) a probationary State employee, ~~or~~

(3) a temporary State employee, or

(4) an applicant for a position subject to the Personnel Act

to support or contribute to a political candidate, political committee as defined in G.S. 163-278.6, or political party or to change the party designation of his voter registration by explicitly threatening ~~him with~~ that ~~employment termination~~ change in employment status or discipline~~,~~ or preferential personnel treatment will occur with regard to any person listed in subdivisions (1) through (3) of this subsection.

(b) Any person violating this section shall be guilty of a misdemeanor punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment for not more than six months, or both.

(c) A State employee subject to the Personnel Act, probationary State employee, or temporary State employee, who without probable cause falsely accuses a person of violating this section shall be subject to discipline or ~~termination~~ change in employment status in accordance with the provisions of G.S. 126-35, 126-37, and 126-38 and may, as otherwise provided by law, be subject to criminal penalties for perjury or civil liability for libel, slander, or malicious prosecution."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 869 **CHAPTER 506**

AN ACT TO INCREASE EXEMPT PROPERTY VALUES AND CLARIFY THE EFFECT OF EXEMPTIONS, TO AUTHORIZE CERTAIN LOAN AND APPRAISAL FEES, TO AMEND THE USURY LAWS APPLICABLE TO COMMERCIAL LOANS, TO AUTHORIZE THE IMPOSITION OF AN ANNUAL FEE OR MONTHLY SERVICE CHARGE ON CREDIT PLANS, AND TO AMEND THE LAW REGARDING ASSUMPTION FEES IN CONNECTION WITH CERTAIN REAL ESTATE LOANS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1601 reads as rewritten:

"*§ 1C-1601. What property exempt; waiver; exceptions.*

(a) Exempt property. -- Each individual, resident of this State, who is a debtor is entitled to retain free of the enforcement of the claims of his creditors:

(1) The debtor's aggregate interest, not to exceed ~~seven thousand five hundred dollars ($7,500)~~ ten thousand dollars ($10,000) in value, in real property or personal property that the debtor or a dependent of the debtor uses as a residence, in a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, or in a burial plot for the debtor or a dependent of the debtor.

(2) The debtor's aggregate interest in any property, not to exceed ~~two thousand five hundred dollars ($2,500)~~ three thousand five hundred dollars ($3,500) in value less any amount of the exemption used under subdivision (1).

(3) The debtor's interest, not to exceed one thousand five hundred dollars ~~($1,000)~~ ($1,500) in value, in one motor vehicle.

(4) The debtor's aggregate interest, not to exceed ~~two thousand five hundred dollars ($2,500)~~ three thousand five hundred dollars ($3,500) in value for the debtor plus ~~five hundred dollars ($500)~~ seven hundred fifty dollars ($750.00) for each dependent of the debtor, not to exceed ~~two~~ three thousand dollars ~~($2,000)~~ ($3,000) total for dependents, in household furnishings, household goods, wearing apparel, appliances, books, animals, crops, or musical instruments, that are held

primarily for the personal, family, or household use of the debtor or a dependent of the debtor.

(5) The debtor's aggregate interest, not to exceed ~~five hundred dollars ($500)~~ seven hundred fifty dollars ($750.00) in value, in any implements, professional books, or tools of the trade of the debtor or the trade of a dependent of the debtor.

(6) Life insurance as provided in Article X, Section 5 of the Constitution of North Carolina.

(7) Professionally prescribed health aids for the debtor or a dependent of the debtor.

(8) Compensation for personal injury or compensation for the death of a person upon whom the debtor was dependent for support, but such compensation is not exempt from claims for funeral, legal, medical, dental, hospital, and health care charges related to the accident or injury giving rise to the compensation.

(b) Definition. -- 'Value' as used in this Article means fair market value of an individual's interest in property, less valid liens superior to the judgment lien sought to be enforced.

(c) Waiver. -- The exemptions provided in this Article and in Sections 1 and 2 of Article X of the North Carolina Constitution, cannot be waived except by:

(1) Transfer of property allocated as exempt (and in that event only as to the specific property transferred), or

(2) Written waiver, after judgment, approved by the clerk or district court judge. The clerk or district court judge must find that the waiver is made freely, voluntarily, and with full knowledge of the debtor's rights to exemptions and that he is not required to waive them;

(3) Failure to assert the exemption after notice to do so pursuant to G.S. 1C-1603. The clerk or district court judge may relieve such a waiver made by reason of mistake, surprise or excusable neglect, to the extent that the rights of innocent third parties are not affected.

(d) Recent purchases. -- The exemptions provided in subdivisions (2), (3), (4) and (5) of subsection (a) of this section are inapplicable with respect to tangible personal property purchased by the debtor less than 90 days preceding the initiation of judgment collection proceedings or the filing of a petition for bankruptcy.

(e) Exceptions. -- The exemptions provided in this Article are inapplicable to claims

(1) Of the United States or its agencies as provided by federal law;

(2) Of the State or its subdivisions for taxes, appearance bonds or fiduciary bonds;
(3) Of lien by a laborer for work done and performed for the person claiming the exemption, but only as to the specific property affected;
(4) Of lien by a mechanic for work done on the premises, but only as to the specific property affected;
(5) For payment of obligations contracted for the purchase of the specific real property affected;
(6) Repealed by Session Laws 1981 (Reg. Sess., 1982), c. 1224, s. 6, effective September 1, 1982;
(7) For contractual security interests in the specific property affected; provided, that the exemptions shall apply to the debtor's household goods notwithstanding any contract for a nonpossessory, nonpurchase money security interest in any such goods;
(8) For statutory liens, on the specific property affected, other than judicial liens;
(9) For child support, alimony or distributive award order pursuant to Chapter 50 of the General Statutes.

(f) Federal Bankruptcy Act. -- The exemptions provided in The Bankruptcy Act, 11 U.S.C. § 522(d), are not applicable to residents of this State. The exemptions provided by this Article shall apply for purposes of The Bankruptcy Act, 11 U.S.C. § 522(b).

(g) Effect of exemptions. -- Notwithstanding any other provision of law, a creditor shall not obtain possession of a debtor's household goods and furnishings in which the creditor holds a nonpossessory, nonpurchase money security interest until the creditor has fully complied with the procedures required by G.S. 1C-1603."

Sec. 2. G.S. 24-1.1 reads as rewritten:

"§ *24-1.1. Contract rates and fees.*

(a) Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan or forbearance other than a credit card, open-end, or similar loan may contract in writing for the payment of interest not in excess of:

(1) Where the principal amount is twenty-five thousand dollars ($25,000) or less, the rate set under ~~subdivision (3)~~ subsection (c) of this section; or
(2) Any rate agreed upon by the parties where the principal amount is more than twenty-five thousand dollars ($25,000).

(b) As used in this section, interest shall not be deemed in excess of the rates provided where interest is computed monthly on the outstanding principal balance and is collected not more than 31 days

in advance of its due date. Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds.

~~(3)~~ (c) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivision (1) of this section on that date. Such rate shall be the latest published ~~non-com-pe-ti-tive~~ noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

(d) Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00).

(e) Any lender may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars ($50.00).

(f) This section shall not be construed to limit fees on loans or extensions of credit in excess of three hundred thousand dollars ($300,000)."

Sec. 3. G.S. 24-1.2 reads as rewritten:

"*§ 24-1.2. Installment rates and fees.*

Except as otherwise provided in this Chapter or other applicable law, the parties to a loan, purchase money loan, advance, commitment for a loan, or forbearance, may contract in writing for the payment of interest not in excess of:

(1) On installment loans not exceeding five thousand dollars ($5,000), which are not secured by a security interest in

any degree on real property, which are for periods of not less than six months nor more than 120 months, which are repayable in substantially equal consecutive monthly payments, which shall not be collected in advance, and which shall be computed monthly on the outstanding principal balance, the rate shall not exceed the rates set under subdivision (2a) of this section; provided, a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of this loan without penalty. The due date of the first monthly payment shall not be more than 45 days following disbursement of funds under any such installment loan.

(2) On installment loans not exceeding twenty-five thousand dollars ($25,000), which are not secured by a first security instrument on real property, and which are payable at least quarterly in substantially equal payments of principal and interest, or in substantially equal payments of principal, the rate of interest, computed on the outstanding balance, shall not exceed the rate set under subdivision (2a) of this section: provided a minimum charge of ten dollars ($10.00) or one dollar ($1.00) per payment may be agreed to and charged in lieu of interest. The borrower may prepay all or any part of the loan without penalty.

(2a) On the fifteenth day of each month, the Commissioner of Banks shall announce and publish the maximum rate of interest permitted by subdivisions (1) and (2) of this section. Such rate shall be the latest published noncompetitive rate for U.S. Treasury bills with a six-month maturity as of the fifteenth day of the month plus six percent (6%), rounded upward or downward, as the case may be, to the nearest one-half of one percent (1/2 of 1%) or sixteen percent (16%), whichever is greater. If there is no nearest one-half of one percent (1/2 of 1%), the Commissioner shall round downward to the lower one-half of one percent (1/2 of 1%). The rate so announced shall be the maximum rate permitted for the term of loans made under this section during the following calendar month when the parties to such loans have agreed that the rate of interest to be charged by the lender and paid by the borrower shall not vary or be adjusted during the term of the loan. The parties to a loan made under this section may agree to a rate of interest which shall vary or be adjusted during the term of the loan in which case the

maximum rate of interest permitted on such loans during a month during the term of the loan shall be the rate announced by the Commissioner in the preceding calendar month.

(3),(4) Repealed by Session Laws 1979, c. 138, s. 3.

(5) Nothing in this section shall be construed to authorize the charging of interest on committed funds prior to the disbursement of said funds.

(6) Notwithstanding the foregoing provisions of this section, on an installment loan not exceeding twenty-five thousand dollars ($25,000) which is secured by a first lien on a residential manufactured home, the parties may contract in writing for the payment of interest as agreed upon by the parties; Provided, however, that this paragraph shall only apply if the parties would have been entitled to so contract by the provisions of section 501 of United States Public Law 96-221 and have complied with the regulations promulgated thereunder. The borrower may prepay all or any part of the loan without penalty.

For the purpose of this paragraph (6), a 'residential manufactured home' means a mobile home as defined in G.S. 143-145(7) which is used as a dwelling.

(7) Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00).

(8) Any lender may charge a party to a loan or extension of credit not secured by real property governed by this section an origination fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the outstanding balance or fifty dollars ($50.00)."

Sec. 4. G.S. 24-1.2A reads as rewritten:

"*§ 24-1.2A. Equity lines of credit.*

(a) Notwithstanding any other provision of this Chapter, the parties to an equity line of credit, as defined in G.S. 45-81, may contract in writing for interest at rates which shall not exceed the maximum rates permitted under G.S. 24-1.2(2a); provided, however, that the parties may contract for interest rates which shall be adjustable or variable, so long as for adjustable or variable rate contracts the rate in effect for a

given period does not exceed the maximum rate permitted under G.S. 24-1.2(2a) for the same period.

(b) Fees may be charged on equity lines of credit which in the aggregate, over the life of the contract based on the maximum limit of the line of credit, do not exceed those permitted under G.S. 24-10. Any lender may charge a party to a loan or extension of credit governed by this section a fee for the modification, renewal, extension, or amendment of any terms of the loan or extension of credit, such fee not to exceed the greater of one-quarter of one percent (1/4 of 1%) of the balance outstanding at the time of the modification, renewal, extension, or amendment of terms, or fifty dollars ($50.00)."

Sec. 5. G.S. 24-10 reads as rewritten:

"*§ 24-10. Maximum fees on loans secured by real property.*

(a) No lender on loans made under G.S. 24-1.1 shall charge or receive from any borrower or any agent for a borrower, any fees or discounts unless otherwise allowed where the principal amount is less than three hundred thousand dollars ($300,000) and is secured by real property, which fees or discounts in the aggregate shall exceed two percent (2%) if a construction loan on other than a one or two family dwelling, and one percent (1%) on any other type of loan; provided, however, if a single lender makes both the construction loan and a permanent loan utilizing one note, the lender may collect the fees as if they were two separate loans. Except as provided herein or otherwise allowed, no party shall pay for the benefit of the lender any other fees or discounts.

(b) Any loan made under G.S. 24-1.1 in an original principal amount of one hundred thousand dollars ($100,000.00) or less may be prepaid in part or in full, after 30 days notice to the lender, with a maximum prepayment fee of two percent (2%) of the outstanding balance at any time within three years after the first payment of principal and thereafter there shall be no prepayment fee, provided that there shall be no prepayment fee charged or received in connection with any repayment of a construction loan; and except as herein provided, any lender and any borrower may agree on any terms as to prepayment of a loan.

(c) 'Construction loan' means a loan which is obtained for the purpose of financing fully, or in part, the cost of constructing buildings or other improvements upon real property and the proceeds of which, under the terms of a written contract between a lender and a borrower, are to be disbursed periodically as such construction work progresses; and such loan shall be payable in full not later than 18 months in case of a loan made under the provisions of G.S. 24-1.1(1) or 36 months in case of any other construction loan made after the execution of the note by the borrower. A construction loan may

include advances for the purchase price of the property upon which such improvements are to be constructed.

(d) (1) Any lender may charge to any person, ~~persons,~~ firm or corporation that assumes a loan, ~~made under the provisions of G.S. 24-1.1 and~~ secured by real ~~property, a fee not to exceed one hundred seventy-five dollars ($175.00); provided, however, that if the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred dollars ($100.00).~~ property, the following fee:

a. Where the mortgage or deed of trust contains a due on sale clause, a fee not to exceed four hundred dollars ($400.00); provided, however, that if the original obligor is not released from liability on the obligation, the fee shall not exceed one hundred twenty-five dollars ($125.00).

b. Where the mortgage or deed of trust does not contain a due on sale clause, a fee not to exceed one hundred twenty-five dollars ($125.00).

The fees authorized by this subsection may be paid in whole or in part by any party but the total shall not exceed the maximum fees set forth herein.

(2) For purposes of this subsection, the term 'due on sale clause' means a contract provision that authorizes a lender to declare immediately due and payable all sums secured by the lender's security instrument if all or any part of the secured property, or an interest therein, is sold or transferred without the lender's prior written consent or contrary to the requirements of the mortgage or the deed of trust. For purposes of this subsection, no lender shall exercise its rights under the due on sale clause if prohibited by federal law as of the date of execution of the contract containing the clause.

(e), (f) Repealed by Session Laws 1985, c. 755, s. 2, effective July 15, 1985.

(g) Notwithstanding the limitations contained in subsection (a) of this section, a lender described in G.S. 24-1.1A(a)(2) may charge or receive from any borrower or any agent for a borrower, fees or discounts which in the aggregate do not exceed two percent (2%) on loans made under G.S. 24-1.1 or G.S. 24-1.2(2) when such loans are secured by a second or junior lien on real property. The fees or discounts are fully earned when the loan is made and are not a prepayment penalty under this Chapter or any other law of this State.

(h) A bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof organized under the laws of this State or the United States, may charge a party to a loan secured by real property a reasonable fee as may be agreed upon by the parties for an appraisal performed by an employee of the bank, savings and loan association, savings bank, or credit union, or any subsidiary or affiliate thereof. Upon the request of the borrower, the lender shall provide at no additional charge to the borrower a copy of any appraisal for which the lender has collected a fee under this subsection. Provision of the copy of an appraisal shall not be construed to create or imply any warranty which does not otherwise exist by the lender as to the accuracy of the appraisal."

Sec. 6. G.S. 24-11 reads as written:

"*§ 24-11. Certain revolving credit charges.*

(a) On the extension of credit under an open-end credit or similar plan (including revolving credit card plans, and revolving charge accounts, but excluding any loan made directly by a lender under a check loan, check credit or other such plan) under which no service charge shall be imposed upon the consumer or debtor if the account is paid in full within 25 days from the billing date, but upon which there may be imposed an annual charge not to exceed ~~twenty~~ twenty-four dollars ~~($20.00),~~ ($24.00), there may be charged and collected interest, finance charges or other fees at a rate in the aggregate not to exceed one and one-half percent (1 1/2%) per month computed on the unpaid portion of the balance of the previous month less payments or credit within the billing cycle or the average daily balance outstanding during the current billing period.

(a1) If the lender chooses not to impose an annual charge under this section, the lender may impose a service charge not to exceed two dollars ($2.00) per month on the balance of any account which is not paid in full within 25 days from the billing date.

(a2) No person, firm or corporation may charge a discount or fee in excess of six percent (6%) of the principal amount of the accounts acquired from or through any vendors or others providing services who participate in such plan.

(b) On revolving credit loans (including check loans, check credit or other revolving credit plans whereby a bank, banking institution or other lending agency makes direct loans to a borrower), if agreed to in writing by the borrower, such lender may collect interest and service charges by application of a monthly periodic rate computed on the average daily balance outstanding during the billing period, such rate not to exceed one and one-half percent (1 1/2%).

(c) Any extension of credit under an open-end or similar plan under which there is charged a monthly periodic rate greater than one and

one-quarter percent (1 1/4%) may not be secured by real or personal property or any other thing of value, provided, that this subsection shall not apply to consumer credit sales regulated by Chapter 25A, the Retail Installment Sales Act; provided further, that in any action initiated for the possession of property in which a security interest has been taken, a judgement for the possession thereof shall be restricted to commercial units (as defined in G.S. 25-2-105(6)) for which the cash price was one hundred dollars ($100.00) or more.

(d) The term 'billing date' shall mean any date selected by the creditor and the bill for the balance of the account must be mailed to the customer at least 14 days prior to the date specified in the statement as being the date by which payment of the new balance must be made in order to avoid the imposition of any finance charge.

(d1) A lender may charge a party to a loan or extension of credit governed by this section a late payment charge not to exceed five dollars ($5.00) for any payment past due for 30 days or more. If a late payment charge has been once imposed with respect to a late payment, no late charge shall be imposed with respect to any future payment which would have been timely and sufficient but for the previous default.

(e) An annual or service charge pursuant to this section upon an existing credit card account upon which ~~an annual~~ the charge has not previously been imposed may not be imposed unless the lender has given the cardholder at least 30 days notice of the proposed charge, and has advised the cardholder of his right not to accept the new charge. This notice shall be bold and conspicuous, and shall be on the face of the periodic billing statement or on a separate statement which is clearly noted on the face of the periodic billing statement provided to the cardholder. If the cardholder does not accept the new charge upon an existing credit card account, the lender may require that the cardholder make no further use of the account beyond the 30-day period in order to avoid paying the annual charge, but the cardholder shall be entitled to pay off any remaining balance according to the terms of the credit agreement. Nothing in this subsection shall limit the lender from decreasing any rates or fees to the cardholder forthwith. Should any cardholder within 12 months of the initial imposition of an annual charge rescind his credit card contract and surrender all cards issued under the contract to the lender, he shall be entitled to a prorated refund of the annual fee previously charged, credited to the cardholder's credit card account."

Sec. 7. G.S. 25A-14 reads as rewritten:

"*§ 25A-14. Finance charge rates and service charge for revolving charge account contracts.*

(a) The finance-charge rate and either the annual charge or the monthly service charge for a consumer credit sale made ~~pursuant to~~ under a revolving charge account contract may not exceed the rates and charge provided for revolving credit by ~~G.S. 24-11(a).~~ G.S. 24-11. ~~The annual fee provided in G.S. 24-11(a) may not be imposed.~~

(b) In the event the revolving charge account contract is secured in whole or in part by a security interest in real property, then the finance-charge rate shall not exceed the rate set out in G.S. 25A-15(d).

(c) No default or deferral charge shall be imposed by the seller in connection with a revolving charge-account contract, except as specifically provided for in ~~G.S. 24-11(a).~~ G.S. 24-11(d1)."

Sec. 8. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 925 **CHAPTER 507**

AN ACT TO PROVIDE A GRACE PERIOD FOR PLUMBING AND HEATING CONTRACTORS ELIGIBLE TO OBTAIN A LICENSE WITHOUT EXAMINATION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 87-21 is amended by adding a new subsection to read:

"(d1) Notwithstanding any other provision of this Article, any resident of the State, upon submission of a license application and license application fee, shall receive a license without examination provided the applicant presents evidence to the Board that he:

(1) Has not previously held a license in the area for which the application is made;

(2) Has engaged in the business of either plumbing or heating contracting as defined in this Article for at least five years prior to July 6, 1971, in any city, town, or other area in which this Article did not apply prior to July 6, 1971; and

(3) Has been continuously engaged, as a primary occupation, in plumbing or heating contracting as defined in this Article.

In order to receive a license under this subsection, the applicant must submit a license application and license application fee and present all supporting evidence to the Board on or prior to December 31, 1991."

Sec. 2. This act is effective upon ratification and expires on December 31, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 965 **CHAPTER 508**

AN ACT TO AUTHORIZE THE ADVANCEMENT OF FUNDS FOR REVENUE BOND PROJECTS BY POLITICAL SUBDIVISIONS AND THE REPAYMENT OF THESE ADVANCES FROM REVENUE BOND PROCEEDS, AND TO PROVIDE FOR THE APPOINTMENT OF COUNTY AND CITY OFFICIALS TO GOVERNING BOARDS OF AUTHORITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-81 reads as rewritten:

"*§ 159-81. Definitions.*

The words and phrases defined in this section shall have the meanings indicated when used in this Article:

(1) 'Municipality' means a county, city, town, incorporated village, sanitary district, metropolitan sewerage district, metropolitan water district, county water and sewer district, water and sewer authority, hospital authority, hospital district, parking authority, special airport district, regional public transportation authority, regional sports authority, and airport authority, a joint agency created pursuant to Part 1 of Article 20 of Chapter 160A of the General Statutes, but not any other forms of local government.

(2) 'Revenue bond' means a bond issued by the State of North Carolina or a municipality pursuant to this Article.

(3) 'Revenue bond project' means any undertaking for the acquisition, construction, reconstruction, improvement, enlargement, betterment, or extension of any one or combination of the following revenue-producing utility or public service enterprise facilities or systems owned or leased as lessee by the issuing ~~unit;~~ unit, to be financed through the issuance of revenue bonds, thereby providing funds to pay the costs of the undertaking or to reimburse funds loaned or advanced by the State or a municipality to pay the costs of the undertaking:

a. Water systems or facilities, including all plants, works, instrumentalities and properties used or useful in obtaining, conserving, treating, and distributing water for domestic or industrial use, irrigation, sanitation, fire protection, or any other public or private use.

b. Sewage disposal systems or facilities, including all plants, works, instrumentalities, and properties used or useful in the collection, treatment, purification, or disposal of sewage.

c. Systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed) or electric energy for lighting, heating, or power for public and private uses, where gas systems shall include the purchase and/or lease of natural gas fields and natural gas reserves and the purchase of natural gas supplies, and where any parts of such gas systems may be located either within the State or without.
d. Systems, facilities and equipment for the collection, treatment, or disposal of solid waste.
e. Public transportation systems, facilities, or equipment, including but not limited to bus, truck, ferry, and railroad terminals, depots, trackages, vehicles, and ferries, and mass transit systems.
f. Public parking lots, areas, garages, and other vehicular parking structures and facilities.
g. Aeronautical facilities, including but not limited to airports, terminals, and hangars.
h. Marine facilities, including but not limited to marinas, basins, docks, dry docks, piers, marine railways, wharves, harbors, warehouses, and terminals.
i. Hospitals and other health-related facilities.
j. Public auditoriums, gymnasiums, stadiums, and convention centers.
k. Recreational facilities.
l. In addition to the foregoing, in the case of the State of North Carolina, low-level radioactive waste facilities developed pursuant to Chapter 104G of the General Statutes, hazardous waste facilities developed pursuant to Chapter 130B of the General Statutes, and any other project authorized by the General Assembly.
m. Economic development projects, including the acquisition and development of industrial parks, the acquisition and resale of land suitable for industrial or commercial purposes, and the construction and lease or sale of shell buildings in order to provide employment opportunities for citizens of the municipality.
n. Facilities for the use of any agency or agencies of the government of the United States of America.
o. Structural and natural stormwater and drainage systems of all types.

The cost of an undertaking may include all property, both real and personal and improved and unimproved, plants, works, appurtenances, machinery, equipment, easements,

water rights, air rights, franchises, and licenses used or useful in connection with any of the foregoing utilities and enterprises; the cost of demolishing or moving structures from land acquired and the cost of acquiring any lands to which such structures are to be moved; financing charges; the cost of plans, specifications, surveys, and estimates of cost and revenues; administrative and legal expenses; and any other expense necessary or incident to the project.

(4) 'Revenues' include all moneys received by the State or a municipality from, in connection with, or as a result of its ownership or operation of a revenue bond project or a utility or public service enterprise facility or system of which a revenue bond project is a part, including (to the extent deemed advisable by the State or a municipality) moneys received from the United States of America, the State of North Carolina, or any agency of either, pursuant to an agreement with the State or a municipality, as the case may be, pertaining to the project. 'Revenues' also include all moneys received by, or on behalf of, the North Carolina Low-Level Radioactive Waste Management Authority in connection with its financing of a low-level radioactive waste facility and all money received by, or on behalf of, the North Carolina Hazardous Waste Management Commission in connection with its financing of a hazardous waste facility."

Sec. 2. G.S. 159-83(a) reads as rewritten:

"(a) In addition to the powers they may now or hereafter have, the State and each municipality shall have the following powers, subject to the provisions of this Article and of any revenue bond order or trust agreement securing revenue bonds:

(1) To acquire by gift, purchase, or exercise of the power of eminent domain or to construct, reconstruct, improve, maintain, better, extend, and operate, one or more revenue bond projects or any portion thereof without regard to location within or without its boundaries, upon determination (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by resolution of the governing board that a location wholly or partially outside its boundaries is necessary and in the public interest.

(2) To sell, exchange, transfer, assign or otherwise dispose of any revenue bond project or portion thereof or interest therein determined (i) in the case of the State, by the Council of State and (ii) in the case of a municipality, by

resolution of the governing board not to be required for any public purpose.

(3) To sell, furnish, and distribute the services, facilities, or commodities of revenue bond projects.

(4) To enter into contracts with any person, firm, or corporation, public or private, on such terms (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may determine, with respect to the acquisition, construction, reconstruction, extension, betterment, improvement, maintenance, or operation of revenue bond projects, or the sale, furnishing, or distribution of the services, facilities or commodities thereof.

(5) To borrow money for the purpose of acquiring, constructing, reconstructing, extending, bettering, improving, or otherwise paying the cost of revenue bond projects, and to issue its revenue bonds or bond anticipation notes therefor, in the name of the State or a municipality, as the case may be, but no encumbrance, mortgage, or other pledge or real property of the State or a municipality may be created in any manner. Notwithstanding the foregoing, the North Carolina Low-Level Radioactive Waste Management Authority may create an encumbrance, mortgage, or other pledge of real property of the Authority in connection with its financing of a low-level radioactive waste facility and the North Carolina Hazardous Waste Management Commission may create an encumbrance, mortgage, or other pledge of real property of the Commission in connection with its financing of a hazardous waste facility.

(6) To establish, maintain, revise, charge, and collect such rates, fees, rentals, tolls, or other charges, free of any control or regulation by the North Carolina Utilities Commission or any other regulatory body except as provided in G.S. 159-95 for the use, services, facilities, and commodities of or furnished by any revenue bond project, and to provide methods of collection of and penalties for nonpayment of such rates, fees, rentals, tolls, or other charges. The rates, fees, rentals, tolls and charges so fixed and charged shall be such as will produce revenues at least sufficient with any other available funds to meet the expense and maintenance and operation of and renewals and replacements to the revenue bond project, including reserves therefor, to pay when due the principal,

interest, and redemption premiums (if any) on all revenue bonds or bond anticipation notes secured thereby, and to fulfill the terms of any agreements made by the State or the issuing municipality with the holders of revenue bonds issued to finance all or any portion of the cost of the project.

(7) To pledge all or part of any proceeds derived from the use of on-street parking meters to the payment of the cost of operating, maintaining, and improving parking facilities whether on-street or off-street, and the principal of and the interest on revenue bonds or bond anticipation notes issued for on-street or off-street parking facilities.

(8) To pledge to the payment of its revenue bonds or bond anticipation notes and interest thereon revenues from one or more revenue bond projects and any leases or agreements to secure such payment, including revenues from improvements, betterments, or extensions to such projects thereafter constructed or acquired as well as the revenues from existing systems, plants, works, instrumentalities, and properties of the projects to be improved, bettered, or extended.

(8a) In the case of any county, city, town, or incorporated village, to make loans or advances to a municipality to provide funds to the municipality to pay any costs of any revenue bond project. Funds received by a municipality in reimbursement of a loan or advance shall be distributed and restricted as provided in G.S. 159-27.1.

(9) To appropriate, apply, or expend for the following purposes the proceeds of its revenue bonds, notes issued in anticipation thereof, and revenues pledged under any resolution or order authorizing or securing the bonds: (i) to pay interest on the bonds or notes and the principal or redemption price thereof when due; (ii) to meet reserves and other requirements set forth in the bond order or trust agreement; (iii) to pay the ~~cost of acquisition, construction, reconstruction, extension, or improvement~~ costs of the revenue bond projects authorized in the bond ~~order~~ order, reimburse funds loaned or advanced for the costs of these revenue bond projects in accordance with the bond order, and ~~to~~ provide working capital for initial maintenance and operation until funds are available from revenues; (iv) to pay and discharge revenue bonds and notes issued in anticipation thereof; (v) to pay and discharge general obligation bonds issued under Article 4 of this Chapter or

under any act of the General Assembly, when the revenues of the project financed in whole or in part by the general obligation bonds will be pledged to the payment of the revenue bonds or notes.

(10) To make and enforce rules and regulations governing the use, maintenance, and operation of revenue bond projects.

(11) To accept gifts or grants of real or personal property, money, material, labor, or supplies for the acquisition, construction, reconstruction, extension, improvement, betterment, maintenance, or operation of any revenue bond project and to make and perform such agreements or contracts as may be necessary or convenient in connection with the procuring or acceptance of such gifts or grants.

(12) To accept loans, grants, or contributions from, and to enter into contracts and cooperate with the United States of America, the State of North Carolina, or any agency thereof, with respect to any revenue bond project.

(13) To enter on any lands, waters, and premises for the purpose of making surveys, borings, soundings, examinations, and other preliminary studies for constructing and operating any revenue bond project.

(14) To retain and employ consultants and other persons on a contract basis for rendering professional, financial, or technical assistance and advice and to select and retain subject to approval of the Local Government Commission the financial consultants, underwriters and bond attorneys to be associated with the issuance of any bonds and to pay for services rendered by underwriters, financial consultants or bond attorneys out of the proceeds of any such issue with regard to which the services were performed.

(15) Subject to any provisions of law requiring voter approval for the sale or lease of utility or enterprise systems, to lease to or from any person, firm, or corporation, public or private, all or part of any revenue bond project, upon such terms and conditions as and for such term of years, not in excess of 40 years, (i) in the case of the State, as the Council of State and (ii) in the case of a municipality, as the governing board may deem advisable to carry out the provisions of this Article, and to provide in such lease for the extension or renewal thereof and, if deemed advisable, for an option to purchase or otherwise lawfully acquire the project upon terms and conditions therein specified.

(16) To execute such instruments and agreements and to do all things necessary or therein in the exercise of the powers

herein granted, or in the performance of the covenants or duties of the State or a municipality, as the case may be, or to secure the payment of its revenue bonds."

Sec. 3. Article 3 of Chapter 159 of the General Statutes is amended by adding a new section to read:

"*§ 159-27.1. Use of revenue bond project reimbursements; restrictions.*

The finance officer of a unit shall deposit any funds received by the unit as a reimbursement of a loan or advance made by the unit pursuant to G.S. 159-83(a)(8a) in the fund from which the unit originally derived the funds to make the loan or advance.

If the funds originally loaned or advanced were proceeds of a bond issue, any funds received as reimbursement shall be applied as required by this section. The funds shall be applied as provided in the instrument securing payment of the bond issue if the instrument contains applicable provisions. Otherwise, the funds shall be applied to either (i) the same general purposes as those for which the bond issue was authorized, or (ii) payment of debt service on the bond issue, including principal, interest, and premium, if any, upon redemption, or payment of the purchase price of bonds for retirement at not more than their face value and accrued interest. After all the bonds of the issue have been paid or satisfied in full, any funds received as reimbursement shall be deposited in the general fund of the unit and may be used for any general fund purpose."

Sec. 4. G.S. 159-90(a) reads as rewritten:

"(a) In fixing the details of revenue bonds, the State or the issuing municipality, as the case may be, shall be subject to the following restrictions and directions:

(1) The maturity dates may not exceed the maximum maturity periods prescribed by the Commission for general obligation bonds pursuant to G.S. 159-122. For bonds issued in reimbursement of a loan or advance, the maximum maturity period to be used in determining the maturity dates of the bonds shall be the maximum permissible period prescribed by the Commission for the original project for which the loan or advance was expended, calculated from the date the original project is completed.

(2) Any bond may be made ~~the~~ subject to redemption prior to maturity, including redemption on demand of the holder, with or without premium, on such notice and at such time or times and with such redemption provisions as may be stated. When any such bond shall have been validly called for redemption and provision shall have been made for the payment of the principal thereof, any redemption premium,

and the interest thereon accrued to the date of redemption, interest thereon shall cease.

(3) The bonds may bear interest at such rate or rates, payable semiannually or otherwise, may be in such denominations, and may be payable in such kind of money and in such place or places within or without the State of North Carolina, as the State Treasurer or the issuing municipality, as the case may be, may determine."

Sec. 5. G.S. 128-1.2 reads as rewritten:

"§ *128-1.2. Ex officio service by county ~~commissioners.~~ and city representatives and officials.*

Except when the resolution of appointment provides otherwise, whenever the governing body of a county or city ~~a board of county commissioners~~ appoints one of its own members or officials to another board or commission, the ~~county commissioner~~ individual so appointed is considered to be serving on the other board or commission as a part of the individual's duties of ~~his~~ office ~~of county commissioner~~ and shall not be considered to be serving in a separate office.

As used in this section, the term 'official' means (i) in the case of a county, the county manager, acting county manager, interim county manager, county attorney, finance officer, or clerk to the board and (ii) in the case of a city, the city manager, acting city manager, interim city manager, city attorney, finance officer, city clerk, or deputy clerk. As used in this section, the term 'city' has the meaning provided in G.S. 160A-1."

Sec. 6. This act is effective upon ratification. Sections 1 through 4 of this act apply to loans and advances made by a municipality on or after January 1, 1982.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 987 **CHAPTER 509**

AN ACT TO CLARIFY THAT A PERSON MUST BE CONVICTED OF A DRIVING OFFENSE THAT OCCURRED DURING THE PERIOD OF SUSPENSION BEFORE A SUSPENSION MAY BE LENGTHENED BASED ON THAT CONVICTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-28.1(c) reads as rewritten:

"(c) Any person whose driving privilege has been suspended or revoked under this section for 12 months may apply for a license after 90 days; any person whose license has been suspended or revoked

under this section for two years may apply for a license after 12 months; any person whose license has been suspended or revoked under this section permanently may apply for a license after three years. Upon the filing of such application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted within the suspension or revocation period of a ~~violation of any provision of the motor vehicle laws,~~ motor vehicle offense, or a violation of the alcoholic beverages laws, or drug laws of North Carolina or any other ~~state.~~ state that occurred during the period of suspension or revocation. The new license may be issued upon such terms and conditions which the Division may see fit to impose for the balance of the suspension or revocation period. When the suspension or revocation period is permanent, the terms and conditions imposed by the Division may not exceed three years."

Sec. 2. G.S. 20-28(a) reads as rewritten:

"(a) Any person whose driver's license has been suspended or revoked other than permanently, as provided in this Chapter, who shall drive any motor vehicle upon the highways of the State while such license is suspended or revoked shall be guilty of a misdemeanor and his license shall be suspended or revoked, as the case may be, for an additional period of one year for the first offense, two years for the second offense, and permanently for a third or subsequent offense.

Provided, however, any person whose license has been suspended or revoked under this section for 12 months may apply for a license after 90 days; any person whose license has been suspended or revoked under this section for two years may apply for a license after 12 months; any person whose license has been suspended or revoked under this section permanently may apply for a license after three years. Upon the filing of such application the Division may, with or without a hearing, issue a new license upon satisfactory proof that the former licensee has not been convicted within the suspension or revocation period of a ~~violation of any provision of the motor vehicle laws,~~ motor vehicle offense, or a violation of the alcoholic beverages laws or drug laws of North Carolina or any other ~~state.~~ state that occurred during the period of suspension or revocation. The new license may be issued upon such terms and conditions as the Division may see fit to impose for the balance of the suspension or revocation period. When the suspension or revocation period is permanent the terms and conditions imposed by the Division may not exceed three years.

Upon conviction, a violator of this section shall be punished by a fine of not less than two hundred dollars ($200.00) or imprisonment in the discretion of the court not to exceed two years, or both;

provided, however, the restoree of a suspended or revoked driver's license who operates a motor vehicle upon the streets or highways of the State without maintaining financial responsibility as provided by law shall be punished as for operating without a driver's license."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1002 **CHAPTER 510**

AN ACT TO CLARIFY CERTAIN PROVISIONS CONTAINED IN THE MOTOR VEHICLE DEALERS AND MANUFACTURERS LICENSING LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-301(e) reads as rewritten:

"(e) The Commissioner shall limit the time for discovery in any contested administrative hearing conducted pursuant to Article 12 to a time not to exceed 60 days. The Commissioner may extend the time for discovery beyond 60 days either upon the consent of all parties to the proceeding or upon application of one or more parties to the proceeding for good cause shown."

Sec. 2. G.S. 20-305(4) reads as rewritten:

"(4) Notwithstanding the terms of any franchise agreement, to prevent or refuse to approve the sale or transfer of the ownership of a dealership by the sale of the business, stock transfer, or otherwise, or the transfer, sale or assignment of a dealer franchise, or a change in the executive management or principal operator of the dealership, or relocation of the dealership to another site within the dealership's relevant market area, if the Commissioner has determined, if requested in writing by the dealer within 30 days after receipt of an objection to the proposed ~~sale, transfer~~ transfer, sale, assignment, relocation, or change, and after a hearing on the matter, that the failure to permit or honor ~~such sale,~~ the transfer, sale, assignment, relocation, or change is unreasonable under the ~~circumstances;~~ circumstances. ~~provided, however, that no~~ No franchise may be ~~sold or assigned or transferred~~ transferred, sold, assigned, relocated, or the executive management or principal operators changed, unless ~~(i)~~ the franchisor has been given at least 30 days' prior written notice as to the identity, financial ~~ability~~ ability, and qualifications of the proposed transferee, ~~and (ii) the sale or~~

~~transfer of the franchise and business will not involve, without the franchisor's consent, a relocation of the the buisness;~~ the identity and qualifications of the persons proposed to be involved in executive management or as principal operators, and the location and site plans of any proposed relocation. The franchisor shall send the dealership notice of objection, by registered or certified mail, return receipt requested, to the proposed transfer, sale, assignment, relocation, or change within 30 days after receipt of notice from the dealer, as provided in this section. Failure by the franchisor to send notice of objection within 30 days shall constitute waiver by the franchisor of any right to object to the proposed transfer, sale, assignment, relocation, or change. The manufacturer or distributor has the burden of proving that the proposed transfer, sale, assignment, relocation, or change is unreasonable under the circumstances."

Sec. 3. G.S. 20-305(5) reads as rewritten:

"(5) To enter into a franchise establishing an additional new motor vehicle dealer or relocating an existing new motor vehicle dealer into a relevant market area where the same line make is then represented without first notifying in writing the Commissioner and each new motor vehicle dealer in ~~such~~ that line make in the relevant market area of the intention to establish an additional dealer or to relocate an existing dealer within or into that market area. Within 30 days of receiving notice or within 30 days after the end of any appeal procedure provided by the manufacturer, any ~~such~~ new motor vehicle dealer may file with the Commissioner a protest to the establishing or relocating of the new motor vehicle dealer. When ~~such~~ a protest is filed, the Commissioner shall promptly inform the manufacturer that a timely protest has been filed, and that the manufacturer shall not establish or relocate the proposed new motor vehicle dealer until the Commissioner has held a hearing, nor thereafter, if the Commissioner has determined that there is good cause for not permitting the addition or relocation of such new motor vehicle dealer.

a. This section does not apply:

1. To the relocation of an existing new motor vehicle dealer within that dealer's relevant market area, provided that the relocation not be at a site within 10 miles of a licensed new motor vehicle dealer for the same line make of motor vehicle; or

2. If the proposed additional new motor vehicle dealer is to be established at or within two miles of a location at which a former licensed new motor vehicle dealer for the same line make of new motor vehicle had ceased operating within the previous two years;
3. To the relocation of an existing new motor vehicle dealer within two miles of the existing site of the new motor vehicle dealership;
4. To the relocation of an existing new motor vehicle dealer if the proposed site of the relocated new motor vehicle dealership is further away from all other new motor vehicle dealers of the same line make in that relevant market area.

b. In determining whether good cause has been established for not entering into or relocating an additional new motor vehicle dealer for the same line make, the Commissioner shall take into consideration the existing circumstances, including, but not limited to:
1. The permanency of the investment of both the existing and proposed additional new motor vehicle dealers;
2. Growth or decline in population, density of population, and new car registrations in the relevant market area;
3. Effect on the consuming public in the relevant market area;
4. Whether it is injurious or beneficial to the public welfare for an additional new motor vehicle dealer to be established;
5. Whether the new motor vehicle dealers of the same line make in that relevant market area are providing adequate competition and convenient customer care for the motor vehicles of the same line make in the market area which shall include the adequacy of motor vehicle sales and service facilities, equipment, supply of motor vehicle parts, and qualified service personnel;
6. Whether the establishment of an additional new motor vehicle dealer or relocation of an existing new motor vehicle in the relevant market area would increase competition in a manner such as to be in the long-term public interest; and

7. The effect on the relocating dealer of a denial of its relocation into the relevant market area.

c. The Commissioner must conduct the hearing and render his final determination as expeditiously as possible, but in any event no later than 180 days after a protest is filed. Unless waived by the parties, failure to do so shall be deemed the equivalent of a determination that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealer, unless such delay is caused by acts of the manufacturer, or the relocating or additional dealer.

d. Any parties to a hearing by the Commissioner concerning the establishment or relocating of a new motor vehicle dealer shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter ~~150A~~ 150B of the General Statutes.

e. In a hearing involving a proposed additional dealership, the manufacturer or distributor has the burden of proof under this section. In a proceeding involving the relocation of an existing dealership, the dealer seeking to relocate has the burden of proof under this section.

f. If the Commissioner determines, following a hearing, that good cause does not exist for refusing to permit the proposed additional or relocated motor vehicle dealership, the dealer seeking the proposed additional or relocated motor vehicle dealership must, within two years, obtain a license from the Commissioner for the sale of vehicles at the relevant site, and actually commence operations at the site selling new motor vehicles of all line makes, as permitted by the Commissioner. Failure to obtain a permit and commence sales within two years shall constitute waiver by the dealer of the dealer's right to the additional or relocated dealership, requiring renotification, a new hearing, and a new determination as provided in this section."

Sec. 4. G.S. 20-305(6) reads as rewritten:

"(6) Notwithstanding the terms, provisions or conditions of any franchise or notwithstanding the terms or provisions of any waiver, to terminate, cancel or fail to renew any franchise with a licensed new motor vehicle dealer unless the manufacturer ~~has:~~ has satisfied the notice requirements of ~~subparagraph c.;~~ subparagraph c. and the Commissioner has determined, if requested in writing by the dealer within

the time period specified in G.S. 20-305(6)c1II, III or IV, as applicable, and after a hearing on the matter, that there is good cause for the termination, cancellation, or nonrenewal of the franchise and that the manufacturer has acted in good faith as defined in this act regarding the termination, cancellation or nonrenewal. When such a petition is made to the Commissioner by a dealer for determination as to the existence of good cause and good faith for the termination, cancellation or nonrenewal of a franchise, the Commissioner shall promptly inform the manufacturer that a timely petition has been filed, and the franchise in question shall continue in effect pending the Commissioner's decision. The Commissioner must conduct the hearing and render ~~his~~ a final determination ~~as expeditiously as possible, but in any event~~ no later than 180 days after a petition has been ~~filed.~~ filed; provided, however, that the Commissioner may extend such period of time upon application of a party and for good cause shown, or upon the consent of all parties to the proceeding. If the termination, cancellation or nonrenewal is pursuant to G.S. 20-305(6)c1III then the Commissioner shall give the proceeding priority consideration and shall render his final determination no later than 60 days after the petition has been filed. Any parties to a hearing by the Commissioner under this section shall have a right of review of the decision in a court of competent jurisdiction pursuant to Chapter 150B of the General Statutes.

a. Notwithstanding the terms, provisions or conditions of any franchise or the terms or provisions of any waiver, good cause shall exist for the purposes of a termination, cancellation or nonrenewal when:
   1. There is a failure by the new motor vehicle dealer to comply with a provision of the franchise which provision is both reasonable and of material significance to the franchise relationship provided that the dealer has been notified in writing of the failure within 180 days after the manufacturer first acquired knowledge of such failure;
   2. If the failure by the new motor vehicle ~~dealer, defined in 1 above,~~ dealer relates to the performance of the new motor vehicle dealer in sales or service, then good cause shall be defined as the failure of the new motor vehicle dealer to comply with reasonable performance criteria

established by the manufacturer if the new motor vehicle dealer was apprised by the manufacturer in writing of ~~such~~ the failure; and

I. ~~Said~~ The notification stated that notice was provided of failure of performance pursuant to this section;

II. The new motor vehicle dealer was afforded a reasonable opportunity, for a period of not less than 180 days, to comply with ~~such~~ the criteria; and

III. The new motor vehicle dealer failed to demonstrate substantial progress towards compliance with the manufacturer's performance criteria during such period and the new motor vehicle dealer's failure was not primarily due to economic or market factors within the dealer's relevant market area which were beyond the dealer's control.

b. The manufacturer shall have the burden of proof under this section.

c. Notification of Termination, Cancellation and Nonrenewal.

1. Notwithstanding the terms, provisions or conditions of any franchise prior to the termination, cancellation or nonrenewal of any franchise, the manufacturer shall furnish notification of ~~such~~ termination, cancellation or nonrenewal to the new motor vehicle dealer as follows:

I. In the manner described in G.S. 20-305(6)c2 below; and

II. Not less than 90 days prior to the effective date of such termination, cancellation or nonrenewal; or

III. Not less than 15 days prior to the effective date of such termination, cancellation or nonrenewal with respect to any of the following:

A. Insolvency of the new motor vehicle dealer, or filing of any petition by or against the new motor vehicle dealer under any bankruptcy or receivership law;

B. Failure of the new motor vehicle dealer to conduct its customary sales and service operations during its customary business

hours for seven consecutive business days, except for acts of God or circumstances beyond the direct control of the new motor vehicle dealer;

C. Revocation of any license which the new motor vehicle dealer is required to have to operate a dealership;

D. Conviction of a felony involving moral turpitude, under the laws of this State or any other state, or territory, or the District of Columbia.

IV. Not less than 180 days prior to the effective date of such termination or cancellation where the manufacturer or distributor is discontinuing the sale of the product line.

2. Notification under this section shall be in writing; shall be by certified mail or personally delivered to the new motor vehicle dealer; and shall contain:

I. A statement of intention to terminate, cancel or not to renew the franchise;

II. A statement of the reasons for the termination, cancellation or nonrenewal; and

III. The date on which ~~such~~ the termination, cancellation or nonrenewal takes effect.

3. Notification provided in G.S. 20-305(6)c1II of 90 days prior to the effective date of such termination, cancellation or renewal may run concurrent with the 180 days designated in G.S. 20-305(6)a2II provided ~~such~~ the notification is clearly designated by a separate written document mailed by certified mail or personally delivered to the new motor vehicle dealer.

d. Payments. --

1. Upon the termination, nonrenewal or cancellation of any franchise by the manufacturer or distributor, pursuant to this section, the new motor vehicle dealer shall be allowed fair and reasonable compensation by the manufacturer for the:

I. New motor vehicle inventory ~~which~~ that has been acquired from the manufacturer within 18 months, at a price not to exceed the original manufacturer's price to the dealer, and which has not been altered or damaged, and which has not been driven more than 200

miles, and for which no certificate of title has been issued;

II. Unused, undamaged and unsold supplies and parts purchased from the manufacturer, at a price not to exceed the original manufacturer's price to the dealer, provided such supplies and parts are currently offered for sale by the manufacturer or distributor in its current parts catalogs and are in salable condition;

III. Equipment and furnishings ~~which~~ that have not been altered or damaged and ~~which~~ that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources; and

IV. Special tools ~~which~~ that have not been altered or damaged and ~~which~~ that have been required by the manufacturer or distributor to be purchased by the new motor vehicle dealer from the manufacturer or distributor, or their approved sources within five years immediately preceding the termination, nonrenewal or cancellation of the franchise.

2. ~~Such fair~~ Fair and reasonable compensation for the above shall be paid by the manufacturer within 90 days of the effective date of termination, cancellation or nonrenewal, provided the new motor vehicle dealer has clear title to the inventory and has conveyed title and possession to the manufacturer.

e. Dealership Facilities Assistance upon Termination, Cancellation or Nonrenewal. --

In the event of the termination, cancellation or nonrenewal by the manufacturer or distributor under this section, except termination, cancellation or nonrenewal for insolvency, license revocation, conviction of a crime involving moral turpitude, or fraud by a dealer-owner:

1. Subject to paragraph 3, if the new motor vehicle dealer is leasing the dealership facilities from a lessor other than the manufacturer, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the rent for the unexpired term of the lease or one year's rent, whichever is less, or

such longer term as is provided in the franchise agreement between the dealer and manufacturer; or

2. Subject to paragraph 3, if the new motor vehicle dealer owns the dealership facilities, the manufacturer shall pay the new motor vehicle dealer a sum equivalent to the reasonable rental value of the dealership facilities for one year.
3. Provided nothing in this ~~section e~~ paragraph e. shall relieve a lessee or owner, as the case may be, from the obligation to mitigate damages under the lease, nor prevent a manufacturer from occupying and using the dealership facilities while paying rent under subsections 1 and 2, nor prevent a manufacturer from obligations by negotiating a lease termination, a sublease or a new lease. Any amounts recovered by the lessee or owner resulting from mitigation of damages shall be deducted from the amount due from the manufacturer.

f. The provisions of paragraphs d. and e. above shall not be applicable when the termination, nonrenewal or cancellation of the franchise agreement is the result of the voluntary act of the dealer."

Sec. 5. G.S. 20-308.1(a) reads as rewritten:

"(a) Notwithstanding the terms, provisions or conditions of any agreement or franchise or other terms or provisions of any novation, waiver or other written instrument, any person who is or may be injured by a violation of a provision of this Article, or any party to a franchise who is so injured in his business or property by a violation of a provision of this Article relating to that franchise, ~~or any person so injured because he refuses to accede to a proposal for~~ or an arrangement which, if consummated, would be in violation of this Article may, notwithstanding the initiation or pendency ~~of~~ of, or failure to initiate an administrative proceeding before the Commissioner concerning the same parties or subject matter, bring an action for damages and equitable relief, including injunctive relief, in any court of competent jurisdiction with regard to any matter not within the jurisdiction of the ~~Commissioner.~~ Commissioner or that seeks relief wholly outside the authority or jurisdiction of the Commissioner to award."

Sec. 6. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1016 **CHAPTER 511**

AN ACT TO AUTHORIZE ISSUANCE OF BONDS FOR FINANCING GAS SYSTEMS OR FACILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159-96(a) reads as rewritten:

"(a) Each utility or public service enterprise listed in G.S. 159-81(3), if financed wholly or partially by revenue bonds issued under this Article, shall be owned or operated by the municipality for its own use and for the use of public and private consumers residing within its corporate limits. A utility or public service enterprise financed wholly or partially by revenue bonds, when operated primarily for the municipality's own use and for users within its corporate limits, may be operated incidentally for users outside its corporate limits. Provided, however, that revenue bonds may be issued for the purpose of financing in whole or in part mass transit systems, aeronautical facilities, marine facilities and systems, systems or facilities for the generation, production, transmission, or distribution of gas (natural, artificial, or mixed), facilities and equipment for the collection, treatment or disposal of solid waste, notwithstanding that such systems, facilities or equipment may be operated for users outside the corporate limits of a municipality where the municipality finds that the system, facilities or equipment so financed would benefit the ~~municipality.~~ municipality; provided further that revenue bonds may not be issued for the purpose of financing in whole or in part systems or facilities for the transmission or distribution of gas (natural, artificial, or mixed) to users outside the corporate limits of a municipality to whom service is available or will be available within a reasonable time from a local distribution natural gas utility pursuant to a certificate of public convenience and necessity issued by the North Carolina Utilities Commission. A finding by the governing body of a municipality that the systems or facilities to be provided by the financing will not provide service to users to whom such service is available or will be available within a reasonable time from a local distribution natural gas utility shall be conclusive upon (i) the expiration of a 45 day period following the making of such finding, (ii) the mailing by the municipality of a copy of such notice within five days after the making of such finding to any local distribution company certificated to provide service to the area in which the facilities are to be located, and (iii) the absence of a written objection to such finding being mailed by any such certificated local distribution company to a municipality by not later than five days prior to the end of such 45 day period, all such mailings to be properly given or made

if sent by United States registered mail, return receipt requested, postage prepaid. Time shall be computed pursuant to G.S. 1A-1, Rule 6(a)."

Sec. 2. This act provides an additional and alternative method for accomplishing the things authorized thereby, is supplemental and additional to powers conferred by other laws, and is not in derogation of any powers now existing.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1017 **CHAPTER 512**

AN ACT TO PROVIDE SUBPOENA POWER TO ALL MUNICIPALITIES, TO PROVIDE FOR THE APPEAL FROM A STOP ORDER ISSUED FOR VIOLATION OF A ZONING ORDINANCE, AND TO AMEND THE STATUTE RELATING TO VOTING REQUIREMENTS FOR ZONING DECISIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-80(c) is repealed.

Sec. 2. G.S. 160A-388 is amended by adding a new subsection to read:

"(g) The board of adjustment may subpoena witnesses and compel the production of evidence. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board of adjustment may apply to the General Court of Justice for an order requiring that its order be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties. No testimony of any witness before the board of adjustment pursuant to a subpoena issued in exercise of the power conferred by this subsection may be used against the witness in the trial of any civil or criminal action other than a prosecution for false swearing committed on the examination. Any person who, while under oath during a proceeding before the board of adjustment, willfully swears falsely, is guilty of a misdemeanor."

Sec. 3. G.S. 160A-421 reads as rewritten:

"§ *160A-421. Stop orders.*

(a) Whenever any building or structure or part thereof is being demolished, constructed, reconstructed, altered, or repaired in a hazardous manner, or in substantial violation of any State or local building law, in a manner that endangers life or property, the appropriate inspector may order the specific part of the work that is in violation or presents such a hazard to be immediately stopped. The stop order shall be in writing, directed to the person doing the work,

and shall state the specific work to be stopped, the specific reasons therefor, and the conditions under which the work may be resumed.

(b) The owner or builder may appeal from a stop order involving alleged violation of the State Building Code or any approved local modification thereof to the North Carolina Commissioner of Insurance or his designee within a period of five days after the order is issued. Notice of appeal shall be given in writing to the Commissioner of Insurance or his designee, with a copy to the local inspector. The Commissioner of Insurance or his designee shall promptly conduct an investigation and the appellant and the inspector shall be permitted to submit relevant evidence. The Commissioner of Insurance or his designee shall as expeditiously as possible provide a written statement of the decision setting forth the facts found, the decision reached, and the reasons for the decision. Pending the ruling by the Commissioner of Insurance or his designee on an appeal no further work shall take place in violation of a stop order. In the event of dissatisfaction with the decision, the person affected shall have the options of:

(1) Appealing to the Building Code Council, or

(2) Appealing to the Superior Court as provided in G.S. 143-141.

(c) The owner or builder may appeal from a stop order involving alleged violation of a local zoning ordinance by giving notice of appeal in writing to the board of adjustment. The appeal shall be heard and decided within the period established by the ordinance, or if none is specified, within a reasonable time. No further work shall take place in violation of a stop order pending a ruling.

(d) Violation of a stop order shall constitute a misdemeanor."

Sec. 4. G.S. 160A-385(a) reads as rewritten:

"(a) Zoning regulations and restrictions and zone boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change, signed by the owners of twenty percent (20%) or more either of the area of the lots included in a proposed change, or of those immediately adjacent thereto either in the rear thereof or on either side thereof, extending 100 feet therefrom, or of those directly opposite thereto extending 100 feet from the street frontage of the opposite lots, an amendment shall not become effective except by favorable vote of ~~three fourths~~ three-fourths of all the members of the city council. The foregoing provisions concerning protests shall not be applicable to any amendment which initially zones property added to the territorial coverage of the ordinance as a result of annexation or ~~otherwise.~~ otherwise, or to an amendment to an adopted special use district or conditional use district if the amendment does not change the types of uses that are permitted within the district or increase the approved

density for residential development, or increase the total approved size of nonresidential development, or reduce the size of any buffers or screening approved for the special use or conditional use district."

Sec. 5. Section 4 of this act is effective upon ratification, applies to zoning decisions made on or after that date, and does not affect pending litigation. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1018 **CHAPTER 513**

AN ACT TO AUTHORIZE JOINT MUNICIPAL POWER AGENCIES TO ENCUMBER CERTAIN PROPERTY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 159B-3(6) reads as rewritten:

"(6) 'Project' shall mean any system or facilities for the generation, transmission and transformation, or any of them, of electric power and energy by any means whatsoever including, but not limited to, any one or more electric generating units situated at a particular site, or any interest in the foregoing, whether an undivided interest as a tenant in common or otherwise. Project does not mean an administrative building or office or facilities related to the administrative building or office."

Sec. 2. G.S. 159B-14 reads as rewritten:

"*§ 159B-14. Bonds of a joint agency.*

A joint agency may issue ~~its~~ bonds ~~pledging to the payment thereof as to both principal and interest the revenues, or any portion thereof,~~ for the purpose of paying the cost of a project and secure both the principal of and interest on the bonds by a pledge of part or all of the revenues derived or to be derived from all or any of its projects, and any additions and betterments thereto or extensions thereof, or from the sale of power and energy and services and facilities related to the utilization of power and energy, or contributions or advances from its members. A joint agency may issue bonds that are not for the purpose of paying the cost of a project and secure the bonds solely by a pledge of revenues, solely by a security interest in real or personal property, or by both a pledge of revenues and a security interest in real or personal property. Bonds of a joint agency shall be authorized by a resolution adopted by its governing board and spread upon its minutes."

Sec. 3. G.S. 159B-15(a) reads as rewritten:

"(a) Each municipality and joint agency is hereby authorized to issue at one time or from time to time its bonds for the purpose of paying all or any part of the cost of any of the purposes herein authorized. The principal of, premium, if any, and the interest on ~~such~~ bonds issued to pay the cost of a project shall be payable solely from ~~the respective funds herein provided for such payment.~~ revenues. Bonds that are not issued to pay the cost of a project shall be payable from revenues, from property pledged as security for the bonds, or from both.

The bonds of each issue shall bear interest at such rate or rates as may be determined by the Local Government Commission of North Carolina with the approval of the issuer, provided that the issuer or the Local Government Commission may by contract provide for the establishment and revision by an agent from time to time of interest rates on bonds that bear interest at a variable rate. The bonds of each issue shall be dated and shall mature in such amounts and at such time or times, not exceeding 50 years from their respective date or dates, as may be determined by the governing board of the issuer, and may be made redeemable before maturity at such price or prices and under such terms and conditions as may be fixed by the governing board of the issuer prior to the issuance of the bonds. The governing board of the issuer shall determine the form and the manner of execution of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the State. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be such officer before the delivery of such bond, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. The governing board of the issuer may also provide for the authentication of the bonds by a trustee or fiscal agent appointed by the issuer, or by an authenticating agent of any such trustee or fiscal agent. The bonds may be issued in coupon or in fully registered form, or both, as the governing board of the issuer may determine, and provisions may be made for the registration of any coupon bonds as to principal alone and also as to both principal and interest, and for the reconversion into coupon bonds of any bonds registered as to both principal and interest, and for the interchange of registered and coupon bonds. At the election of a joint agency, any bonds issued and sold in accordance with the provisions of this Chapter may be purchased or otherwise acquired by the joint agency and held by it in lieu of cancellation, and

subsequently resold in accordance with the provisions of this Chapter."

Sec. 4. G.S. 159B-16(1) reads as rewritten:

"(1) The pledge of all or any part of the revenues derived or to be derived from the project or projects to be financed by the bonds, or from the sale or other disposition of power and energy and services and facilities related to the utilization of power and energy, ~~financed by the bonds,~~ or from the electric system or facilities of a municipality or a joint agency."

Sec. 5. G.S. 159B-16 is amended by adding a new subdivision to read:

"(15) For bonds that are not issued to pay the cost of a project, the pledge, assignment, mortgage, or grant of a security interest in any real or personal property or interest in real or personal property, including the pledge, assignment, or grant of a security interest in money, rents, charges, or other revenues or proceeds derived by the joint agency from the sale of property, from insurance, or from a condemnation award. In the event of default on a bond secured by a pledge, assignment, mortgage, or grant of a security interest, the rights of the bond holders and the liabilities arising from the default shall be limited, except to the extent provided in a pledge of revenues, to the specific property or interest in property pledged, assigned, or mortgaged or in which a security interest was granted to secure the bonds, and no claim for any deficiency shall be made nor any deficiency judgment entered as a result of the pledge, assignment, mortgage, or grant of a security interest in the property or the interest in property."

Sec. 6. G.S. 159B-23 reads as rewritten:

"§ *159B-23. Limited liability.*

(a) ~~The bonds~~ Bonds shall be special obligations of the municipality or joint agency issuing them. The principal of, premium, if any, and interest on the bonds shall not be payable from the general funds of the municipality or joint ~~agency, nor shall they~~ agency. Bonds issued to pay the cost of a project and, except as provided in this subsection, bonds that are not issued to pay the cost of a project shall not constitute a legal or equitable pledge, charge, lien, or encumbrance upon any of ~~its~~ the municipality's or joint agency's property or upon any of its income, receipts, or revenues, except the funds ~~which are~~ pledged under the resolution authorizing the bonds or the trust agreement securing the bonds. Bonds that are not issued to

pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property shall constitute an encumbrance on the municipality's or joint agency's property as provided in the resolution authorizing the bonds or the trust agreement securing the bonds.

(b) Neither the faith and credit nor the taxing power of a municipality or of the State are, or may be, pledged for the payment of the principal of or interest on ~~the~~ bonds, and no holder of ~~the~~ bonds shall have the right to compel the exercise of the taxing power by the State or a ~~municipality or~~ municipality. No holder of bonds issued to pay the cost of a project shall have the right to compel the forfeiture of any of ~~its~~ the municipality's or joint agency's property in connection with any default ~~thereon.~~ on the bonds. A holder of bonds that are not issued to pay the cost of a project and that are secured by a pledge, assignment, mortgage, or grant of a security interest in property may compel the forfeiture of the property to the extent allowed in the resolution authorizing the bonds or the trust agreement securing the bonds.

(c) Every bond issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable solely from the revenues pledged to its payment and that the municipality or joint agency is not obligated to pay the principal or interest except from ~~such~~ these revenues. A bond that is not issued to pay the cost of a project shall recite in substance that the principal of and interest on the bond is payable and secured as provided in the resolution authorizing the bond or the trust agreement securing the bond."

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1060 **CHAPTER 514**

AN ACT TO INCREASE THE LENGTH OF TIME FOR WHICH THE EFFECTIVE DATE OF A CERTIFICATE OF APPROPRIATENESS MAY BE DELAYED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-400.14(a) reads as rewritten:

"(a) An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (c). However, the effective date of such a certificate may be delayed for a period of up to ~~180~~ 365 days from the

date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the preservation commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the preservation commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal.

If the commission or planning agency has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the local governing board, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission or planning agency for a period of up to 180 days or until the local governing board takes final action on the designation, whichever occurs first."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1108 **CHAPTER 515**

AN ACT TO ENACT THE PUBLIC BATHROOM EQUITY ACT.

The General Assembly of North Carolina enacts:

Section 1. The Building Code Council shall review the North Carolina State Building Code and shall study it to assure (i) that an adequate number of rest room fixtures are available for women at newly constructed, publicly and privately owned facilities where the public congregates, (ii) that at facilities in which diaper-changing tables are provided in women's rest rooms, diaper-changing tables are also provided in men's rest rooms, (iii) that the doors to the rest room stalls open to the outside and (iv) that unisex bathrooms identified as "Unisex-Disabled/Handicapped only" with fixtures for handicapped persons are placed in strategic locations of large shopping centers, airports, major public buildings, and highway rest stops, so that spouses and other attendants may physically assist handicapped persons with their toileting requirements.

Sec. 2. The Building Code Council shall report to the Human Resources Committees of the Senate and the House of Representatives

during the Regular 1992 Session of the 1991 General Assembly on its study and recommendations made pursuant to this act.

Sec. 3. Nothing in this act shall require additional appropriations. The provisions of this act shall be carried out with existing agency funds.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1132 **CHAPTER 516**

AN ACT TO AUTHORIZE A SINGLE COUNTY TO ORGANIZE A WATER AND SEWER AUTHORITY PURSUANT TO CHAPTER 162A OF THE GENERAL STATUTES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162A-3(a) reads as rewritten:

"(a) The governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing to be held thereof. No such political subdivision shall be required to make any other publication of such resolution under the provisions of any other law."

Sec. 2. G.S. 162A-3.1(a) reads as rewritten:

"(a) As an alternative to the procedure set forth in G.S. 162A-3, the governing body of a single county or the governing bodies of any two or more political subdivisions may by resolution signify their determination to organize an authority under the provisions of this section of this Article. Each of such resolutions shall be adopted after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than 10 days prior to the date fixed for such hearing, in a newspaper having a general circulation in the political subdivision. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the authority and shall state the time and place of the public hearing. No such political subdivision shall be

required to make any other publication of such resolution under the provisions of any other law."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

H.B. 1236 **CHAPTER 517**

AN ACT TO CONFORM THE CRITERIA FOR DESIGNATION AS A DISTRESSED COUNTY FOR INCOME TAX PURPOSES TO THE CRITERIA USED BY THE INDUSTRIAL DEVELOPMENT FUND, TO INCREASE THE NUMBER OF SEVERELY DISTRESSED COUNTIES TO THIRTY-THREE, AND TO REPEAL THE SUNSET.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-130.40(c) reads as rewritten:

"(c) County Designation. -- A severely distressed county is a county designated as ~~such~~ severely distressed by the Secretary of Economic and Community Development. Each year, on or before December 31, the Secretary of Economic and Community Development shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty-five~~ thirty-three highest in the State. The Secretary shall assign to each county in the State a distress factor ~~which~~ that is the sum of the following:

(1) The county's rank in a ranking of counties by rate of unemployment from lowest to ~~highest and~~ highest.

(2) ~~the~~ The county's rank in a ranking of counties by per capita income from highest to lowest.

(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data ~~from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available.~~ published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. A designation as a severely distressed county is effective only for the calendar year following the designation."

Sec. 2. G.S. 105-151.17(c) reads as rewritten:

"(c) County Designation. -- A severely distressed county is a county designated as ~~such~~ severely distressed by the Secretary of Economic and Community Development. Each year, on or before December 31, the Secretary of Economic and Community Development shall designate which counties are considered severely distressed, and shall provide that information to the Secretary of Revenue. A county is considered severely distressed if its distress factor is one of the ~~twenty-five~~ thirty-three highest in the State. The Secretary shall assign to each county in the State a distress factor ~~which~~ that is the sum of the following:

(1) The county's rank in a ranking of counties by rate of unemployment from lowest to ~~highest and~~ highest.

(2) ~~the~~ The county's rank in a ranking of counties by per capita income from highest to lowest.

(3) The county's rank in a ranking of counties by percentage growth in population from lowest to highest.

In measuring rates of unemployment and per capita income, the Secretary shall use the latest available data ~~from the North Carolina Employment Security Commission and the United States Department of Commerce for the most recent thirty-six month period for which data is available.~~ published by a State or federal agency generally recognized as having expertise concerning the data. In measuring population growth, the Secretary shall use the most recent estimates of population certified by the State Budget Officer. A designation as a severely distressed county is effective only for the calendar year following the designation."

Sec. 3. Section 3 of Chapter 568 of the 1987 Session Laws reads as rewritten:

"Sec. 3. This act shall become effective for taxable years beginning on or after ~~January 1, 1988, and shall expire for taxable years beginning on or after January 1, 1993. Notwithstanding the expiration of the credit, an installment of a credit and any unused portion of a credit for which the taxpayer qualified before the act expired shall remain available to the taxpayer, to be taken in accordance with the provisions that applied to the repealed credit.~~ January 1, 1988."

Sec. 4. Sections 1 and 2 of this act are effective for taxable years beginning on or after January 1, 1992. The remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 2nd day of July, 1991.

S.B. 411 **CHAPTER 518**

AN ACT TO ABOLISH THE PERINATAL HEALTH CARE PROGRAM ADVISORY COUNCIL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-128 is repealed.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

S.B. 564 **CHAPTER 519**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE TOWN OF HIGHLANDS.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the Town of Highlands is revised and consolidated to read:

"THE CHARTER OF THE TOWN OF HIGHLANDS.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. *Incorporation.* The Town of Highlands, North Carolina, and the inhabitants thereof shall continue to be a municipal body politic and corporate, under the name of the 'Town of Highlands', also referred to as the 'Town'.

"Sec. 1.2. *Powers.* The Town has and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the Town of Highlands specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits are those existing at the time of ratification of this Charter, as set forth on the official map of the Town and as they may be altered from time to time in accordance with law. An official map of the Town, showing the current boundaries, is maintained permanently in the office of the Town Clerk and is available for public inspection. Immediately upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies shall be filed in the office of the Secretary of State, the Macon or Jackson County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Mayor and Board of Commissioners.* The Mayor and the Board of Commissioners, hereinafter referred to as the 'Board', comprises the governing body of the Town.

"Sec. 2.2. *Board of Commissioners; Composition; Terms of Office.* The Board is composed of five Commissioners elected by all the qualified voters of the Town for terms of two years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the Town for a term of two years or until his or her successor is elected and qualified. The Mayor is the official head of the Town government and presides at meetings of the Board; may vote only when there is an equal division on any question or matter before the Board; and shall exercise the powers and duties conferred by law or as directed by the Board.

"Sec. 2.4. *Mayor Pro Tempore.* The Board shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity until the organizational meeting following the next regular municipal election, despite the contrary provisions of G.S. 160A-70.

"Sec. 2.5. *Meetings.* In accordance with general law, the Board shall establish a suitable time and place for its regular meetings. Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Voting Requirements; Quorum.* Official actions of the Board and all votes shall be taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. The quorum provisions of G.S. 160A-174 apply.

"Sec. 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Board are as provided by general law. Vacancies that occur in any elective office of the Town shall be filled by appointment as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292.

"Sec. 3.2. *Election of Board of Commissioners.* The Commissioners serving on the date of ratification of this Charter shall serve until the expiration of their terms or until their successors are elected and qualified.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in each regular municipal election.

"Sec. 3.4. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION.

"Sec. 4.1. *Form of Government.* The Town operates under the Mayor-Council form of government, in accordance with Part 3 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *Town Clerk.* The Board shall appoint a Town Clerk to keep a journal of the proceedings of the Board; to maintain official records and documents; to give notice of meetings; and to perform such other duties required by law or as the Board may direct.

"Sec. 4.3. *Tax Collector.* The Board shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the Town, subject to general law, this Charter and Town ordinances.

"Sec. 4.4. *Town Attorney.* The Board shall appoint a Town Attorney licensed to practice law in North Carolina. It shall be the duty of the Town Attorney to represent the Town, advise Town officials, and perform other duties required by law or as the Board may direct.

"Sec. 4.5. *Other Administrative Officers and Employees.* The Board may authorize other positions and may organize the Town government as deemed appropriate, subject to the requirements of general law.

"ARTICLE V. ADDITIONAL PROVISIONS.

"Sec. 5.1. *Alcoholic Beverages.* Alcoholic Beverage Control Stores shall operate within the Town of Highlands as provided in Chapter 611, Session Laws of 1977; Chapter 116, Session Laws of 1979; and Chapter 889, Session Laws of 1988.

"Sec. 5.2. *Scholarship Program.* The Town's scholarship program for graduates of Highlands High School shall continue to be administered as provided in Chapter 332, Session Laws of 1975.

"Sec. 5.3. *Tree Regulation.* The Town may adopt ordinances to regulate the removal of trees from public and commercially zoned private property within the Town in order to preserve, protect, and enhance one of the most valuable natural resources of the community and to protect the health, safety, and welfare of its citizens.

"Sec. 5.4. *Appropriations for Advertising.* The Town may appropriate from nontax funds a sum not exceeding two thousand dollars ($2,000) annually for the purpose of advertising the Town and promoting the tourist industry and other industries. The Town may pay portions of the appropriation to the Highlands Chamber of Commerce, The Hudson Library of Highlands, North Carolina, Incorporated, the Highlands-Cashiers Hospital, Inc., and the Highlands Cemetery Company, Inc. Any ordinance or resolution appropriating municipal funds to the organizations named herein shall

state the purpose or purposes for which the funds are to be spent, and they may be expended for no other purpose. The Town shall require each organization receiving municipal funds pursuant to this section to account periodically for the expenditure of the funds."

Sec. 2. The purpose of this act is to revise the Charter of the Town of Highlands and to consolidate certain acts concerning the property, affairs, and government of the Town. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts concerning the property, affairs, or government of public schools, or acts validating official actions, proceedings, contracts, or obligations of any kind.

Sec. 4. The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 56, Private Laws of 1883
Chapter 208, Private Laws of 1891
Chapter 156, Private Laws of 1901
Chapter 65, Private Laws of 1909
Chapter 134, Private Laws of 1913 (Extra Session)
Chapter 28, Private Laws of 1921
Chapter 37, Private Laws of 1931
Chapter 368, Public-Local Laws of 1939
Chapter 589, Session Laws of 1945
Chapter 45, Session Laws of 1947
Chapter 505, Session Laws of 1951
Chapter 696, Session Laws of 1957
Chapter 316, Session Laws of 1969
Chapter 756, Session Laws of 1979
Chapter 828, Session Laws of 1986 (Regular Session).

Sec. 5. The Mayor and Commissioners serving on the date of ratification of this act shall serve until the expiration of their terms. Thereafter those offices shall be filled as provided in Articles II and III of the Charter contained in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests which arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the Town of Highlands not inconsistent with the provisions of this act shall continue in effect until repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the Town or any of its departments or agencies is abated or otherwise affected by this act.

Sec. 9. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

S.B. 664 **CHAPTER 520**

AN ACT TO INCREASE THE JURISDICTION OF MAGISTRATES AND CLERKS OF A COURT IN WORTHLESS CHECK CASES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-180 reads as rewritten:

"*§ 7A-180. Functions of clerk of superior court in district court matters.*

The clerk of superior court:

(1) Has and exercises all of the judicial powers and duties in respect of actions and proceedings pending from time to time in the district court of his county which are now or hereafter conferred or imposed upon him by law in respect of actions and proceedings pending in the superior court of his county;

(2) Performs all of the clerical, administrative and fiscal functions required in the operation of the district court of his county in the same manner as he is required to perform such functions in the operation of the superior court of his county;

(3) Maintains, under the supervision of the Administrative Office of the Courts, an office of uniform consolidated records of all judicial proceedings in the superior court division and the district court division of the General Court of Justice in his county. Those records shall include civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court and all other records

required by law to be maintained. The form and procedure for filing, docketing, indexing, and recording shall be as prescribed by the Administrative Officer of the Courts notwithstanding any contrary statutory provision as to the title and form of the record or as a method of indexing;

(4) Has the power to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility to certain alcohol, traffic, hunting, fishing, and boating offenses in accordance with a schedule of offenses promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fine or penalty and costs;

(5) Has the power to issue warrants of arrest valid throughout the State, and search warrants valid throughout the county of the issuing clerk;

(6) Has the power to conduct an initial appearance in accordance with Chapter 15A, Article 24, Initial Appearance, and to fix conditions of release in accordance with Chapter 15A, Article 26, Bail; and

(7) Continues to exercise all powers, duties and authority theretofore vested in or imposed upon clerks of superior court by general law, with the exception of jurisdiction in juvenile matters;

(8) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations of G.S. 14-107 when restitution is made, the amount of the check is ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) or less, and the warrant does not charge a fourth or subsequent violation of this statute, and, in such cases, to enter such judgments as the chief district judge shall direct and, forward the amounts collected as restitution to the appropriate prosecuting witnesses and to collect the costs.

(9) Has the power to accept written appearances, waivers of trial and pleas of guilty to violations of G.S. 14-399(c), and, in such cases, to enter judgments as the chief district court judge shall direct. No violation of G.S. 14-399 may be disposed of pursuant to this subdivision unless the criminal pleading specifically charges a violation of subsection (c) of G.S. 14-399."

Sec. 2. G.S. 7A-273 reads as rewritten:

"§ *7A-273. Powers of magistrates in infractions or criminal actions.*

In criminal actions or infractions, any magistrate has power:

(1) In misdemeanor or infraction cases, other than traffic, hunting, fishing, boating, and alcohol offenses, in which the

maximum punishment which can be adjudged cannot exceed imprisonment for 30 days, or a fine of fifty dollars ($50.00) or a penalty of not more than fifty dollars ($50.00), exclusive of costs, to accept guilty pleas or admissions of responsibility and enter judgment;

(2) In misdemeanor or infraction cases involving alcohol, traffic, hunting, fishing, and boating offenses, to accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, in accordance with the schedule of offenses and fines or penalties promulgated by the Conference of Chief District Judges pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the fines or penalties and costs;

(3) To issue arrest warrants valid throughout the State;

(4) To issue search warrants valid throughout the county; and

(5) To grant bail before trial for any noncapital offense;

(6) Notwithstanding the provisions of subdivision (1) of this section, to hear and enter judgment as the chief district judge shall direct in all worthless check cases brought under G.S. 14-107, when the amount of the check is ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) or less. Provided, however, that under this section magistrates may not impose a prison sentence longer than 30 days;

(7) To conduct an initial appearance as provided in G.S. 15A-511;

(8) To accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-107 when the amount of the check is ~~one thousand dollars ($1,000)~~ two thousand dollars ($2,000) or less, restitution is made, and the warrant does not charge a fourth or subsequent violation of this statute, and in these cases to enter judgments as the chief district judge directs.

(9) Notwithstanding the provisions of subdivision (1) of this section, to accept written appearances, waivers of trial and pleas of guilty in violations of G.S. 14-399(c) and enter judgments in those cases as the chief district judge directs. No violation of G.S. 14-399 may be disposed of pursuant to this subdivision unless the criminal pleading specifically charges a violation of subsection (c) of G.S. 14-399."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses committed on and after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

S.B. 717 **CHAPTER 521**

AN ACT TO SUPPORT THE ESSENTIAL ACCESS COMMUNITY HOSPITAL (EACH) PROGRAM.

The General Assembly of North Carolina enacts:

Section 1. The Department of Human Resources, Office of Rural Health and Resource Development, shall participate in the Health Care Financing Administrator's Essential Access Community Hospital (EACH) Program.

Sec. 2. The Department of Human Resources, Office of Rural Health and Resource Development, shall develop and implement the appropriate plan and proposal for the State's participation in the Essential Access Community Hospital (EACH) Program and shall report to the 1991 General Assembly, Regular Session 1992, on the plan and proposal and on the changes to Chapter 131E of the General Statutes necessary to facilitate the State's implementation of the Essential Access Community Hospital (EACH) Program.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 133 **CHAPTER 522**

AN ACT TO REQUIRE THE DEPARTMENT OF TRANSPORTATION TO USE, CONSISTENT WITH ECONOMIC FEASIBILITY AND APPLICABLE ENGINEERING AND ENVIRONMENTAL QUALITY STANDARDS, CERTAIN RECYCLED GOODS FOR SPECIFIED PURPOSES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-309.14(f) reads as rewritten:

"(f) (1) All State agencies, including the Department of ~~Transportation,~~ Transportation and the Department of Administration, and units of local ~~government,~~ government are required to procure compost products when they can be substituted for, and cost no more than, regular soil amendment products, provided the compost products meet all applicable ~~State~~ engineering and environmental quality standards, specifications, and rules. This product preference shall apply to, but not be limited to, ~~the construction of~~ highway construction and maintenance projects, ~~road rights-of-way,~~ highway

planting and beautification projects, recultivation and erosion control programs, and other projects.

(2) The Department of Transportation shall, consistent with economic feasibility and applicable engineering and environmental quality standards, use scrap tires, demolition debris, and untreated, stabilized, or encapsulated ash from boilers and incinerators in highway construction and maintenance projects."

Sec. 2. This act becomes effective 1 July 1991.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 180 **CHAPTER 523**

AN ACT TO AMEND THE DOLLAR AMOUNT FOR WHICH CERTAIN PROPERTY OFFENSES ARE DESIGNATED FELONIES RATHER THAN MISDEMEANORS AND TO MAKE CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-107 reads as rewritten:

"§ *14-107. Worthless checks.*

It shall be unlawful for any person, firm or corporation, to draw, make, utter or issue and deliver to another, any check or draft on any bank or depository, for the payment of money or its equivalent, knowing at the time of the making, drawing, uttering, issuing and delivering such check or draft as aforesaid, that the maker or drawer thereof has not sufficient funds on deposit in or credit with such bank or depository with which to pay the same upon presentation.

It shall be unlawful for any person, firm or corporation to solicit or to aid and abet any other person, firm or corporation to draw, make, utter or issue and deliver to any person, firm or corporation, any check or draft on any bank or depository for the payment of money or its equivalent, being informed, knowing or having reasonable grounds for believing at the time of the soliciting or the aiding and abetting that the maker or the drawer of the check or draft has not sufficient funds on deposit in, or credit with, such bank or depository with which to pay the same upon presentation.

The word 'credit' as used herein shall be construed to mean an arrangement or understanding with the bank or depository for the payment of any such check or draft.

~~Any person, firm or corporation violating any provision of this section shall be guilty of a misdemeanor and upon conviction shall be punished as follows:~~ A violation of this section shall be a Class J

felony if the amount of the check or draft is more than two thousand dollars ($2,000). If the amount of the check or draft is two thousand dollars ($2,000) or less, a violation of this section shall be a misdemeanor punishable as follows:

(1) If ~~such~~ the amount of the check or draft is not over ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00), the punishment shall be by a fine not to exceed fifty dollars ($50.00) or imprisonment for not more than 30 days. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a general misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

(2) If the amount of ~~such~~ the check or draft is over ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00), the punishment shall be by a fine not to exceed ~~five hundred dollars ($500.00)~~ two hundred fifty dollars ($250.00) or imprisonment for not more than six months, or both. Provided, however, if such person has been convicted three times of violating G.S. 14-107, he shall on the fourth and all subsequent convictions (i) be punished in the discretion of the district or superior court as for a general misdemeanor and (ii) be ordered, as a condition of probation, to refrain from maintaining a checking account or making or uttering a check for three years.

(3) If ~~such~~ the check or draft is drawn upon a nonexistent account, the punishment shall be by a fine not to exceed one thousand dollars ($1,000) or imprisonment for not more than two years, or both.

(4) If ~~such~~ the check or draft is drawn upon an account that has been closed by the drawer prior to time the check is drawn, the punishment shall be a fine not to exceed four hundred dollars ($400.00) or imprisonment for not more than five months or both.

~~(5) In deciding to impose any sentence other than an~~ In deciding to impose any sentence other than an active prison sentence, the sentencing judge shall consider and may require, in accordance with the provisions of G.S. 15A-1343, restitution to the victim for the amount of the check or draft and each prosecuting witness (whether or not under subpoena) shall be entitled to a witness fee as provided by G.S. 7A-314 which shall be taxed as part of the cost and assessed to the defendant."

Sec. 2. G.S. 14-72 reads as rewritten:

"*§ 14-72. Larceny of property; receiving stolen goods or possessing stolen goods ~~not exceeding $400.00 in value~~.*

(a) Larceny of goods of the value of more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) is a Class H felony. The receiving or possessing of stolen goods of the value of more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000) while knowing or having reasonable grounds to believe that the goods are stolen is a Class H felony. Larceny as provided in subsection (b) of this section is a Class H felony. Receiving or possession of stolen goods as provided in subsection (c) of this section is a Class H felony. Except as provided in subsections (b) and (c) of this section, larceny of property, or the receiving or possession of stolen goods knowing or having reasonable grounds to believe them to be stolen, where the value of the property or goods is not more than ~~four hundred dollars ($400.00),~~ one thousand dollars ($1,000), is a misdemeanor punishable under G.S. 14-3(a). In all cases of doubt, the jury shall, in the verdict, fix the value of the property stolen.

(b) The crime of larceny is a felony, without regard to the value of the property in question, if the larceny is:

(1) From the person; or

(2) Committed pursuant to a violation of G.S. 14-51,14-53, 14-54 or 14-57; or

(3) Of any explosive or incendiary device or substance. As used in this section, the phrase 'explosive or incendiary device or substance' shall include any explosive or incendiary grenade or bomb; any dynamite, blasting powder, nitroglycerin, TNT, or other high explosive; or any device, ingredient for such device, or type or quantity of substance primarily useful for large-scale destruction of property by explosive or incendiary action or lethal injury to persons by explosive or incendiary action. This definition shall not include fireworks; or any form, type, or quantity of gasoline, butane gas, natural gas, or any other substance having explosive or incendiary properties but serving a legitimate nondestructive or nonlethal use in the form, type, or quantity stolen.

(4) Of any firearm. As used in this section, the term 'firearm' shall include any instrument used in the propulsion of a shot, shell or bullet by the action of gunpowder or any other explosive substance within it. A 'firearm,' which at the time of theft is not capable of being fired, shall be included within this definition if it can be made to work. This definition shall not include air rifles or air pistols.

(5) Of any record or paper in the custody of the North Carolina State Archives as defined by G.S. 121-2(7) and 121-2(8).

(c) The crime of possessing stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony or the crime of receiving stolen goods knowing or having reasonable grounds to believe them to be stolen in the circumstances described in subsection (b) is a felony, without regard to the value of the property in question."

Sec. 3. G.S. 14-73 reads as rewritten:

"*§ 14-73. Jurisdiction of the superior courts in cases of larceny and receiving stolen goods.*

The superior courts shall have exclusive jurisdiction of the trial of all cases of the larceny of property, or the receiving of stolen goods knowing them to be stolen, of the value of more than ~~four hundred dollars ($400.00)~~ one thousand dollars ($1,000)."

Sec. 4. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, watercraft or aircraft, used to unlawfully conceal, convey or transport property in violation of G.S. 14-71, 14-71.1, or 20-106, or used by any person in the commission of armed or common-law robbery, or used by any person in the commission of any larceny when the value of the property taken is more than ~~four hundred dollars ($400.00)~~ two thousand dollars ($2,000) shall be subject to forfeiture as provided herein, except that:

(1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;

(2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;

(3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;

(4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;

(5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation

that may subject the conveyance to forfeiture under this section;

(6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply."

Sec. 5. G.S. 108A-53(a) reads as rewritten:

"(a) Any person, whether provider or recipient or person representing himself as such, who knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in the amount of ~~four hundred dollar ($400.00)~~ two thousand dollars ($2,000) or less shall be guilty of a misdemeanor. Whoever knowingly obtains or attempts to obtain, or aids or abets any person to obtain by means of making a willfully false statement or representation or by impersonation or by failing to disclose material facts or in any manner not authorized by this Part or the regulations issued pursuant thereto, transfers with intent to defraud any food stamps or authorization cards to which he is not entitled in an amount more than ~~four hundred dollars ($400.00)~~ two thousand dollars ($2,000) shall be guilty of a felony and shall be punished as in cases of larceny."

Sec. 6. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 240 **CHAPTER 524**

AN ACT TO ALLOW AN EXTENSION OF TIME FOR THE TOWN OF GIBSONVILLE TO FILE AN APPLICATION FOR A SALES TAX REFUND.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of G.S. 105-164.14(c) and (d), an application for a sales tax refund filed by the

Town of Gibsonville for taxes paid during the fiscal year ending June 30, 1989, that otherwise complies with the requirements of G.S. 105-164.14(c), shall be considered timely if it is filed on or before December 31, 1991.

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 283 **CHAPTER 525**

AN ACT TO AMEND THE LAW CONCERNING ASSAULTS ON GOVERNMENTAL OFFICERS AND EMPLOYEES AND TO MAKE IT A FELONY TO ASSAULT A GOVERNMENTAL OFFICER OR EMPLOYEE WITH A DEADLY WEAPON.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-33(b) reads as rewritten:

"(b) Unless his conduct is covered under some other provision of law providing greater punishment, any person who commits any assault, assault and battery, or affray is guilty of a misdemeanor punishable by a fine, imprisonment for not more than two years, or both such fine and imprisonment if, in the course of the assault, assault and battery, or affray, he:

(1) Inflicts, or attempts to inflict, serious injury upon another person or uses a deadly weapon; or

(2) Assaults a female, he being a male person at least 18 years of age; or

(3) Assaults a child under the age of 12 years; or

~~(4) Assaults a law-enforcement officer, a custodial officer of the State Department of Correction, personnel of a detention facility or personnel of a training school, while the officer or personnel is discharging or attempting to discharge a duty of his office; or~~

~~(5) Assaults an officer of the North Carolina General Court of Justice while engaged in official judicial duties or on account of the performance of official judicial duties; or~~

~~(6) Assaults a school administrator, school teacher, substitute school teacher, or school teacher aide when any of these persons is discharging or attempting to discharge his official duties; or~~

~~(7) Assaults one of the following officers or employees of a county department of social services when that officer or employee is discharging or attempting to discharge a duty of his office or employment: the director, an administrator or~~

~~other person in a supervisory position, a social worker, an eligibility specialist, or a receptionist.~~

(8) Assaults an officer or employee of the State or of any political subdivision of the State, when the officer or employee is discharging or attempting to discharge his official duties."

Sec. 2. G.S. 14-34.2 reads as rewritten:

"§ *14-34.2. Assault with a firearm or other deadly weapon upon ~~law-enforcement officer, fireman, or emergency medical services personnel~~ governmental officers or employees.*

Any person who commits an assault with a firearm or any other deadly weapon upon ~~any:~~

~~(1) Law-enforcement officer;~~

~~(2) Fireman; or~~

~~(3) Emergency medical services personnel certified to transport patients, including ambulance attendants, emergency medical technicians, emergency medical technician intermediates, and emergency medical technician paramedics, when responding to a call;~~ an officer or employee of the State or of any political subdivision of the State in the performance of his duties shall be guilty of a Class I felony."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date. Prosecutions for offenses committed before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 290 **CHAPTER 526**

AN ACT TO ALLOW NOTICE BY PUBLICATION OF HOUSING CODE ENFORCEMENT WHERE SERVICE BY CERTIFIED MAIL IS REFUSED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-445 reads as rewritten:

"§ *160A-445. Service of complaints and orders.*

Complaints or orders issued by a public officer pursuant to an ordinance adopted under this Part shall be served upon persons either personally or by registered or certified mail. If the identities of any owners or the whereabouts of persons are unknown and cannot be ascertained by the public officer in the exercise of reasonable diligence, or, if the owners are known but have refused to accept

service by registered or certified mail, and the public officer makes an affidavit to that effect, then the serving of the complaint or order upon the ~~unknown~~ owners or other persons may be made by publication in a newspaper having general circulation in the city at least once no later than the time at which personal service would be required under the provisions of this Part. When service is made by publication, a notice of the pending proceedings shall be posted in a conspicuous place on the premises thereby affected."

Sec. 2. This act applies only to municipalities that have a population in excess of 300,000 by the last federal census.

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 330 **CHAPTER 527**

AN ACT TO AMEND THE DEFINITION OF MOTOR VEHICLE DEALER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-286(11) reads as rewritten:

"(11) 'Motor vehicle dealer' and 'dealer' mean ~~any person, firm, association, or corporation engaged in the business of selling motor vehicles, or who holds or held at the time a cause of action under this Article accrued, a valid sales and service agreement, franchise or contract, granted by the manufacturer or distributor for the retail sale of said manufacturer's or distributor's new motor vehicles.~~ any person who does any of the following:

a. For commission, money, or other thing of value, buys, sells, or exchanges, whether outright or on conditional sale, bailment lease, chattel mortgage, or otherwise, five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

b. On behalf of another and for commission, money, or other thing of value, arranges, offers, attempts to solicit, or attempts to negotiate the sale, purchase, or exchange of an interest in five or more motor vehicles within any 12 consecutive months, regardless of who owns the motor vehicles.

c. Engages, wholly or in part, in the business of selling new motor vehicles or new or used motor vehicles, or used motor vehicles only, whether or not the motor

vehicles are owned by that person, and sells five or more motor vehicles within any 12 consecutive months.

d. Offers to sell, displays, or permits the display for sale for any form of compensation five or more motor vehicles within any 12 consecutive months.

e. Primarily engages in the leasing or renting of motor vehicles to others and sells or offers to sell those vehicles at retail.

The term 'motor vehicle dealer' or 'dealer' does not ~~include:~~ include any of the following:

a. Receivers, trustees, administrators, executors, guardians, or other persons appointed by or acting under the judgment or order of any ~~court; or~~ court.

b. Public officers while performing their official ~~duties; or~~ duties.

c. Persons disposing of motor vehicles acquired for their own use or the use of a family member, and actually so used, when the ~~same shall~~ vehicles have been ~~so~~ acquired and used in good faith and not for the purpose of avoiding the provisions of this ~~Article; or~~ Article.

d. ~~Persons, firms or corporations~~ Persons who ~~shall~~ sell motor vehicles as an incident to their principal business but who are not engaged primarily in the selling of motor vehicles. This category includes ~~finance companies~~ financial institutions who ~~shall~~ sell repossessed motor vehicles and insurance companies who sell motor vehicles to which they have taken title as an incident of payments made under policies of insurance and who do not maintain a used car lot or building with one or more employed motor vehicle salesmen.

e. ~~Persons, firms or corporations~~ Persons manufacturing, distributing or selling trailers and semitrailers weighing not more than 750 pounds and carrying not more than ~~1,500~~ a 1,500 pound load.

f. A licensed real estate broker or salesman who sells a mobile home for the owner as an incident to the sale of land upon which the mobile home is located.

g. An employee of an organization arranging for the purchase or lease by the organization of vehicles for use in the organization's business.

h. Any publication, broadcast, or other communications media when engaged in the business of advertising, but not otherwise arranging for the sale of motor vehicles owned by others.

i. Any person dealing solely in the sale or lease of vehicles designed exclusively for off-road use.

j. Any real property owner who leases any interest in property for use by a dealer.

k. Any person acquiring any interest in a motor vehicle for a family member."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 400 **CHAPTER 528**

AN ACT TO MAKE VARIOUS CHANGES IN THE BOARD OF MORTUARY SCIENCE PROCEDURES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-210.18(c)(4) reads as rewritten:

"(4) Nomination of candidates for election shall be made to the Board of Mortuary Science Elections by a written petition signed by not less than 20 embalmers, funeral directors or funeral service licensees licensed to practice in North Carolina, and filed with said Board of Mortuary Science Elections subsequent to the ~~fifteenth~~ first day of May of the year in which the election is to be held and not later than midnight of the ~~fifteenth~~ first day of August of such year, or not later than such earlier date (not before July 1) as may be set by the Board of Mortuary Science Elections: Provided, that not less than 10 days' notice of such earlier date shall be given to all embalmers, funeral directors and funeral service licensees qualified to sign a petition of nomination."

Sec. 2. G.S. 90-210.18(c)(8) reads as rewritten:

"(8) The said ballots shall be canvassed by the Board of Mortuary Science Elections beginning at ~~noon~~ 1:00 p.m. on a day and at a place set by said Board and announced by it in the notice accompanying the sending out of the ballots and envelopes, said date to be not later than four days after the date fixed by the Board for the closing of the balloting. The canvassing shall be made publicly and any licensed embalmer, funeral director or funeral service

licensee may be present. The counting of ballots shall be conducted as follows: The envelopes shall be displayed to the persons present and an opportunity shall be given to any person present to challenge the qualification of the voter whose signature appears on the envelope or to challenge the validity of the envelope. Any envelope (with enclosed ballot) challenged shall be set aside, and the challenge shall be heard later or at that time by said Board. After the envelopes have been so exhibited, those not challenged shall be opened and the ballots extracted therefrom, insofar as practicable without showing the marking on the ballots, and there shall be a final and complete separation of each envelope and its enclosed ballot. Thereafter each ballot shall be presented for counting, shall be displayed and, if not challenged, shall be counted. No ballot shall be valid if it is marked for more nominees than there are positions to be filled in that election: Provided, that no ballot shall be rejected for any technical error unless it is impossible to determine the voter's choices or choice from the ballot. The counting of ballots shall be continued until completed. During the counting, challenge may be made to any ballot on the grounds only of defects appearing on the face of the ballot. The said Board may decide the challenge immediately when it is made or it may put aside the ballot and determine the challenge upon the conclusion of the counting of the ballots."

Sec. 3. G.S. 90-210.23(e) reads as rewritten:

"(e) The Board is empowered to regulate and inspect, according to law, funeral service establishments, their operation and the licenses under which they are operated, and to enforce as provided by law the rules, regulations and requirements of the Division of Health Services and of the city, town or county wherein any such funeral service establishment is maintained and operated. Any funeral establishment which, upon inspection, is found not to meet all of the requirements of this Article shall pay a reinspection fee to the Board for each additional inspection that is made to ascertain that the deficiency or other violation has been corrected."

Sec. 4. G.S. 90-210.25(a)(4) reads as rewritten:

"(4) a. A person desiring to become a resident trainee shall apply to the Board on a form provided by the Board. The application shall state that the applicant is not less than 18 years of age, of good moral character, and is the graduate of a high school or the equivalent thereof.

and shall indicate the licensee under whom the applicant expects to train. A person training to become an embalmer may serve under either a licensed embalmer or a funeral service licensee. A person training to become a funeral director may serve under either a licensed funeral director or a funeral service licensee. A person training to become a funeral service licensee shall serve under a funeral service licensee. The application must be sustained by oath of the applicant and be accompanied by the appropriate fee. When the Board is satisfied as to the qualifications of an applicant it shall instruct the secretary to issue a certificate of resident traineeship.

b. When a resident trainee leaves the proctorship of the licensee under whom the trainee has worked, the licensee shall file with the Board an affidavit showing the length of time served with the licensee by the trainee, and the affidavit shall be made a matter of record in the Board's office. The licensee shall deliver a copy of the affidavit to the trainee.

c. A person who has not completed the traineeship and wishes to do so under a licensee other than the one whose name appears on the original certificate may reapply to the Board for approval, without payment of an additional fee.

d. A certificate of resident traineeship shall be signed by the resident trainee and upon payment of the renewal fee shall be renewable one year after the date of original registration; but the certificate may not be renewed more than one time. The Board shall mail to each registered trainee at his last known address a notice that the renewal fee is due and that, if not paid within 30 days of the notice, the certificate will be canceled. A penalty, in addition to the renewal fee, shall be charged for a late renewal, but the renewal of the registration of any resident trainee who is engaged in the active military service of the United States at the time renewal is due may, at the discretion of the Board, be held in abeyance for the duration of that service without penalties. No credit shall be allowed for the 12-month period of resident traineeship that shall have been completed more than three years preceding the examination for a license.

e. All registered resident trainees shall report to the Board at least every three months during traineeship upon forms provided by the Board listing the work which has been completed during the preceding three months of resident traineeship. The data contained in the reports shall be certified as correct by the licensee under whom the trainee has served during the period and by the licensed person who is managing the funeral service establishment. Each report shall list the following:
   1. For funeral director trainees, the conduct of any funerals during the relevant time period,
   2. For embalming trainees, the embalming of any bodies during the relevant time period,
   3. For funeral service trainees, both of the activities named in 1 and 2 of this subsection, engaged in during the relevant time period.

f. To meet the resident traineeship requirements of G.S. 90-210.25(a)(1), G.S. 90-210.25(a)(2) and G.S. 90-210.25(a)(3) the following must be shown by the affidavit(s) of the licensee(s) under whom the trainee worked:
   1. That the funeral director trainee has, under supervision, assisted in directing at least 25 funerals during the resident traineeship,
   2. That the embalmer trainee has, under supervision, assisted in embalming at least 25 bodies during the resident traineeship,
   3. That the funeral service trainee has, under supervision assisted in directing at least 25 funerals and, under supervision, assisted in embalming at least 25 bodies during the resident traineeship.

g. The Board may suspend or revoke a certificate of resident traineeship for violation of any provision of this Article.

h. Each sponsor for a registered resident trainee must during the period of sponsorship be actively employed with a funeral establishment. The traineeship shall be a primary vocation of the trainee.

i. Only one resident trainee may register and serve at any one time under any one person licensed under this Article.

~~j. The Board shall not register a resident trainee unless it is shown that the funeral establishment where he is to be employed had at least 35 funerals during the 12~~

~~months immediately preceding the date of the application.~~

~~k. The Board shall not register more than one resident trainee for each 150 funerals had by the funeral establishment during the 12 months immediately preceding the date of the application.~~

l. The Board shall register no more than one resident trainee at a funeral establishment that conducted 100 or fewer funerals during the 12 months immediately preceding the date of the application, and shall register no more than one resident trainee for each additional 100 funerals conducted at the funeral establishment during the 12 months immediately preceding the date of the application."

Sec. 5. G.S. 90-210.25(a)(5) reads as rewritten:

"(5) The Board by regulation may recognize other examinations that the Board deems equivalent to its own.

All licenses shall be signed by the president and secretary of the Board and the seal of the Board affixed thereto. All licenses shall be issued, renewed or duplicated for a period not exceeding one year upon payment of the renewal fee, and all licenses, renewals or duplicates thereof shall expire and terminate the thirty-first day of December following the date of their issue unless sooner revoked and canceled; provided, that the date of expiration may be changed by unanimous consent of the Board and upon 90 days' written notice of such change to all persons licensed for the practice of funeral directing, embalming and funeral service in this State.

The holder of any license issued by the Board who shall fail to renew the same on or before January 31 of the calendar year for which the license is to be renewed shall have forfeited and surrendered the license as of that date. No license forfeited or surrendered pursuant to the preceding sentence shall be reinstated by the Board unless it is shown to the Board that the applicant has, throughout the period of forfeiture, engaged full time in another state of the United States or the District of Columbia in the practice to which his North Carolina license applies and has completed for each such year continuing education substantially equivalent in the opinion of the Board to that required of North Carolina licensees; or has completed in North Carolina a total number of hours of accredited continuing education computed by multiplying five times

the number of years of forfeiture; or has passed the North Carolina examination for the forfeited license. No additional resident traineeship shall be required. The applicant shall be required to pay all delinquent annual renewal fees and a reinstatement fee. The Board may waive the provisions of this section for an applicant for a forfeiture which occurred during his service in the armed forces of the United States provided he applies within six months following severance therefrom.

All licensees now or hereafter licensed in North Carolina shall take courses of study in subjects relating to the practice of the profession for which they are licensed, to the end that new techniques, scientific and clinical advances, the achievements of research and the benefits of learning and reviewing skills will be utilized and applied to assure proper service to the public.

As a prerequisite to the annual renewal of a license, the licensee must complete, during the year immediately preceding renewal, at least five hours of continuing education courses, approved by the Board prior to enrollment; except that for renewals for calendar year 1980 the required length of study shall be a total of 15 hours in the three years immediately preceding January 1, 1980.

The Board shall not renew a license unless fulfillment of the continuing education requirement has been certified to it on a form provided by the Board, but the Board may waive this requirement for renewal in cases of certified illness or undue hardship or where the licensee lives outside of North Carolina and does not practice in North Carolina, and the Board shall waive the requirement for all licensees who have been licensed in North Carolina for a continuous period of 25 years or ~~more.~~ more, and for all licensees who are, at the time of renewal, members of the General Assembly.

The Board shall cause to be established and offered to the licensees, each calendar year, at least five hours of continuing education courses in subjects encompassing the license categories of embalming, funeral directing and funeral service. The Board may charge licensees attending these courses a reasonable registration fee in order to meet the expenses thereof and may also meet those expenses from other funds received under the provisions of this Article.

Any person who having been previously licensed by the Board as a funeral director or embalmer prior to July 1, 1975, shall not be required to satisfy the requirements herein for licensure as a funeral service licensee, but shall be entitled to have such license renewed upon making proper application therefor and upon payment of the renewal fee provided by the provisions of this Article. Persons previously licensed by the Board as a funeral director may engage in funeral directing, and persons previously licensed by the Board as an embalmer may engage in embalming. Any person having been previously licensed by the Board as both a funeral director and an embalmer may upon application therefor receive a license as a funeral service licensee."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 493 **CHAPTER 529**

AN ACT TO AUTHORIZE STATE ASSISTANCE AND INTERVENTION IN LOW PERFORMING SCHOOL UNITS.

The General Assembly of North Carolina enacts:

Section 1. Subchapter II of Chapter 115C of the General Statutes is amended by adding a new Article to read:

"ARTICLE 6A.

"State Assistance and Intervention in Low Performing School Units.

"*§ 115C-64.1. Identification of low performing school units.*

The State Board of Education shall annually identify low performing local school administrative units. Low performing local school administrative units are units in which (i) student performance measures are substantially below, as defined by the State Board, those reported by other units in the State, and (ii) student dropout rates are substantially higher than, as defined by the State Board, the average statewide rate.

"*§ 115C-64.2. Development of plans to improve student performance and decrease dropout rates.*

(a) Each identified local school administrative unit shall submit to the State Board of Education a plan for improving student performance and decreasing dropout rates. The plan may include requests for the State Board to waive State laws and regulations so as to grant the unit the fiscal and programmatic flexibility necessary to implement the

plan. The State Board may grant such waivers if it finds that the waivers are necessary and appropriate for the unit to improve student performance and decrease dropout rates.

(b) It is the goal of the General Assembly to provide significant assistance to an identified unit and to enable the unit to implement successfully its improvement plan. To accomplish these goals the Department of Public Instruction shall contact each identified unit, notify it of the services available through the Department to assist the unit in developing its plan and in improving student performance and decreasing dropout rates, and assist the unit in developing and implementing its plan. Department services shall include monitoring the unit's progress, tutoring and counseling unit personnel in strategies to reach the unit's goals, and providing additional funds to the unit to accomplish approved portions of the plan.

"*§ 115C-64.3. Notification of parents and the general public.*

(a) Each identified unit shall notify the parents of students attending schools in the unit that the State Board of Education has found that (i) student performance measures in the unit are substantially below those reported by other units in the State, or (ii) student performance measures in the unit are substantially below those reported for other units in the State with similar demographic characteristics, and (iii) student dropout rates are substantially higher than the average statewide rate.

(b) The Department of Public Instruction shall prepare and release a report for each identified unit. The report shall include the identified unit's description of the steps it is taking to improve student performance measures and reduce student dropout rates.

"*§ 115C-64.4. Review of plans by the State Board; appointment of caretakers.*

(a) The State Board shall annually review the progress made in identified units. If the State Board finds that a unit has not made satisfactory progress, as defined by the State Board, the State Board shall appoint a caretaker administrator, a caretaker board, or both. No caretaker administrator or board shall be appointed in less than two years following the submission of an identified unit's plan, or prior to January 1, 1994.

(b) The State Board may assign any of the powers and duties of the local superintendent and the local finance officer to the caretaker administrator as it deems necessary and appropriate to improve student performance measures and reduce student dropout rates in the unit. The caretaker administrator shall perform all of such powers and duties. The State Board of Education may terminate the contract of any local superintendent entered into on or after July 1, 1991, when it appoints a caretaker administrator. The Administrative Procedure Act

shall apply to any such decision. Neither party to any such contract shall be entitled to damages.

(c) The State Board may assign any of the powers and duties of the local board of education to a caretaker board as it deems necessary and appropriate to improve student performance measures and reduce student dropout rates in the unit. The caretaker board shall perform all of such powers and duties.

(d) After a caretaker board has been appointed, the General Assembly shall consider, at its next session, the future governance of the identified school administrative unit.

"*§ 115C-64.5. Adoption of rules.*

Prior to December 1, 1991, the State Board of Education shall adopt rules, policies, and procedures to implement this Article, including rules, policies, and procedures for (i) providing identified districts with assistance in developing and implementing improvement plans, (ii) approving waivers of State laws and regulations as necessary and appropriate to implement improvement plans, (iii) determining when caretaker administrators and boards shall be appointed, (iv) appointing caretaker administrators and boards, and (v) determining the term of caretaker administrators and boards."

Sec. 2. G.S. 120-30.9G reads as rewritten:

"*§ 120-30.9G. School Administrative Units; State Board of Education; Local Boards of Education Attorney.*

(a) The State Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965.

(b) The attorney for any local board of education where that school administrative unit is covered by the Voting Rights Act of 1965 shall submit to the Attorney General of the United States within 30 days of ratification any local acts of the General Assembly, or actions of the local boards of education which constitutes a 'change affecting voting' under Section 5 of the Voting Rights Act of 1965 in that school administrative unit. If the change affecting voting is a merger of two or more school administrative units, the change shall be submitted jointly by the attorneys of the school administrative units involved, or by one of them by agreement of the attorneys involved."

Sec. 3. G.S. 115C-12 is amended by adding a new subdivision to read:

"(20) Duty to Report Appointment of Caretaker Administrators and Boards. -- Pursuant to G.S. 120-30.9G the State

Board of Education shall submit to the Attorney General of the United States within 30 days any rules, policies, procedures, or actions taken pursuant to G.S. 115C-64.4 which could result in the appointment of a caretaker administrator or board to perform any of the powers and duties of a local board of education where that school administrative unit is covered by the Voting Rights Act of 1965."

Sec. 4. Upon ratification of this act, the State Board of Education shall submit, to the Attorney General of the United States for preclearance under the Voting Rights Act of 1965, Article 6A of Chapter 115C as it is created by this act.

Sec. 5. G.S. 115C-451 reads as rewritten:

"*§ 115C-451. Reports to State Board of ~~Education.~~ Education; failure to comply with School Budget Act.*

(a) The State Board of Education shall have authority to require local school administrative units to make such reports as it may deem advisable with respect to the financial operation of the public schools.

(b) The State Board of Education shall be responsible for assuring that local boards of education comply with State laws and regulations regarding the budgeting, management, and expenditure of funds. When a local board of education willfully or negligently fails or refuses to comply with these laws and regulations, the State Board of Education shall issue a warning to the local board of education and direct it to take remedial action.

(c) If the local board of education, after warning, persists in willfully or negligently failing or refusing to comply with these laws and regulations, the State Board of Education shall by resolution assume control of the financial affairs of the local board of education and shall appoint an administrator to exercise the powers assumed. The adoption of a resolution shall have the effect of divesting the local board of education of its powers as to the adoption of budgets, expenditure of money, and all other financial powers conferred upon the local board of education by law."

Sec. 6. If any section or provision of this act is declared invalid under section 5 of the Voting Rights Act of 1965, or unconstitutional by the courts, it does not affect the validity of this act as a whole, or any part other than the part declared to be unconstitutional or invalid.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 516 **CHAPTER 530**

AN ACT REQUIRING TRAFFIC SIGNS AND OTHER TRAFFIC CONTROL DEVICES ON ALL HIGHWAYS AND PUBLIC VEHICULAR AREAS TO CONFORM TO THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 136-30 reads as rewritten:

"*§ 136-30. Uniform ~~guide and warning~~ signs and other traffic control devices on ~~highways.~~ highways, streets, and public vehicular areas.*

(a) State Highway System. -- The Department of Transportation ~~is hereby authorized to classify, designate and mark both intrastate and interstate highways, including connecting streets in incorporated towns and cities, lying within this State and to provide a system of marking and signing such highways. Highways shall be distinctly marked with some standard, uniform design and the numbers thereon shall correspond with the numbers given the various routes by the Department of Transportation and shown on official maps issued by the Department of Transportation. Other guide signs and warning signs shall also be of uniform design. The system of marking and signing highways shall correlate with and so far as possible conform to the system adopted in other states.~~ may number and mark highways in the State highway system. All traffic signs and other traffic control devices placed on a highway in the State highway system must conform to the Uniform Manual. The Department of Transportation shall have the power to control all signs within the right-of-way of ~~State highways.~~ highways in the State highway system. The Department of Transportation may erect ~~proper and uniform~~ signs directing persons to roads and places of importance.

(b) Municipal Street System. -- All traffic signs and other traffic control devices placed on a municipal street system street must conform to the Uniform Manual. All traffic control devices placed on a highway that is within the corporate limits of a municipality but is part of the State highway system must be approved by the Department of Transportation.

(c) Public Vehicular Areas. -- Except as provided in this subsection, all traffic signs and other traffic control devices placed on a public vehicular area, as defined in G.S. 20-4.01, must conform to the Uniform Manual. The owner of private property that contains a public vehicular area may place on the property a traffic control device, other than a sign designating a parking space for handicapped persons, as defined in G.S. 20-37.5, that differs in material from the uniform device but does not differ in shape, size, color, or any other

way from the uniform device. The owner of private property that contains a public vehicular area may place on the property a sign designating a parking space for handicapped persons that differs in material and color from the uniform sign but does not differ in shape, size, or any other way from the uniform device.

(d) Definition. -- As used in this section, the term 'Uniform Manual' means the Manual on Uniform Traffic Control Devices for Streets and Highways, published by the United States Department of Transportation, and any supplement to that Manual adopted by the North Carolina Department of Transportation."

Sec. 2. G.S. 136-30.1(c) is repealed.

Sec. 3. G.S. 136-31 is repealed.

Sec. 4. G.S. 20-37.6 reads as rewritten:

"§ *20-37.6. Handicapped; drivers and passengers; parking privileges.*

(a) Any vehicle driven by or transporting a person who is handicapped as defined by G.S. 20-37.5 or transporting a person who is visually impaired as defined by G.S. 111-11, as certified by a licensed ophthalmologist, optometrist, or Division of Services for the Blind, may be parked for unlimited periods in parking zones restricted as to the length of time parking is permitted. This provision has no application to those zones or during times in which the stopping, parking, or standing of all vehicles is prohibited or which are reserved for special types of vehicles. Any qualifying vehicle may park in spaces designated by aboveground markings as restricted to vehicles distinguished as being driven by or as transporting the handicapped or as transporting the visually impaired.

(b) Handicapped Car Owners; Distinguishing License Plates. -- If the handicapped or visually impaired person is a registered owner of a vehicle, this vehicle may display a distinguishing license plate. This license plate shall be issued for the normal fee applicable to standard license plates. Any vehicle owner who qualifies for a distinguishing license plate may also receive a combination of two distinguishing placards or identification cards under subsection (c).

(c) Handicapped Drivers and Passengers; Distinguishing Placards or Identification Cards. -- A person who is either handicapped or visually impaired may apply for issuance of a distinguishing placard or a wallet-size identification card to be designed by the Division of Motor Vehicles of the Department of Transportation, in cooperation with the Office for the Handicapped of the Department of Insurance. Any organization which, as determined and certified by the State Vocational Rehabilitation Agency, regularly transports handicapped or visually impaired people, may also apply. A placard shall be at least 6 inches by 12 inches in size, and a placard or identification card shall contain all the information the Division of Motor Vehicles deems

necessary for designation and enforcement. A placard or identification card shall be displayed on the driver's side of the dashboard of a vehicle only when the vehicle is being driven by a duly licensed handicapped driver or is being used to transport handicapped or visually impaired passengers. When the placard or identification card is properly displayed, all parking rights and privileges extended to vehicles displaying a distinguishing license plate issued pursuant to subsection (b) shall apply. The Division of Motor Vehicles shall establish procedures for the issuance of the distinguishing placards and identification cards, and may charge a fee sufficient to pay the actual cost of issuance. A combination of two placards or identification cards may be issued to an applicant on request. Applicants who are organizations may receive one placard or identification card for each transporting vehicle.

(d) Designation of Parking Places. -- Designation of parking spaces for ~~the physically~~ handicapped persons ~~and the visually impaired~~ on streets and ~~in other areas, including public vehicular areas specified in G.S. 20-4.01(32), shall be by the use of sign R7-8 for multiple parking spaces as shown in the Manual on Uniform Traffic Control Devices, or sign R7-8a for single parking spaces as shown in the N.C. Department of Transportation Supplement to the Manual on Uniform Traffic Control Devices. Signs R7-8 and R7-8a~~ public vehicular areas shall comply with G.S. 136-30. A sign designating a parking space for handicapped persons shall state the maximum penalty for parking in ~~a parking space for the physically handicapped or visually impaired~~ the space in violation of the law.

~~(d1) Unique Properties. -- The owner of private property which contains a public vehicular area, on which is to be designated one or more parking spaces for the physically handicapped and the visually impaired, may file a written certification, on a form supplied by the Department of Transportation, that signs conforming to G.S. 20-37.6(d) would not be compatible with the unique visual character of the property. Upon filing of the certification with the Department of Transportation, the owner may cause to be erected signs of materials and colors different from signs R7-8 and R7-8a. The signs shall be the same size and shape as signs R7-8 or R7-8a, as appropriate, with the same letters, words, numbers, and symbols, except for the statement of the maximum penalty for parking in a parking space for the physically handicapped or visually impaired in violation of the law. Such signs shall be deemed to conform to G.S. 20-37.6(d).~~

(e) Enforcement of Handicapped Parking Privileges. -- It shall be unlawful:

(1) To park or leave standing any vehicle in a space designated with a sign pursuant to subsection (d) of this section for handicapped persons or visually impaired persons when the vehicle does not display the distinguishing license plate, placard, or identification card as provided in this section or a disabled veteran registration plate issued pursuant to G.S. 20-81.4[;]

(2) For any person not qualifying for the rights and privileges extended to handicapped or visually impaired persons under this section to exercise or attempt to exercise such rights or privileges by the unauthorized use of a distinguishing license plate, placard, or identification card issued pursuant to the provisions of this section;

(3) To park or leave standing any vehicle so as to obstruct a curb ramp or curb cut for handicapped persons as provided for by the North Carolina Building Code or as designated in G.S. 136-44.14;

(4) For those responsible for designating parking spaces for the handicapped to erect or otherwise use signs not conforming to G.S. 20-37.6(d) for this purpose.

This section is enforceable in all public vehicular areas specified in G.S. 20-4.01(32).

(f) Penalties for Violation. --

(1) A violation of G.S. 20-37.6(e)(1), (2) or (3) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any automobile, truck, or other vehicle was found to be parked in a properly designated handicapped parking space in violation of the provisions of this section, it shall be *prima facie* evidence in any court in the State of North Carolina that the vehicle was parked and left in the space by the person, firm, or corporation in whose name the vehicle is registered and licensed according to the records of the Division of Motor Vehicles. No evidence tendered or presented under this authorization shall be admissible or competent in any respect in any court or tribunal except in cases concerned solely with a violation of this section.

(2) A violation of G.S. 20-37.6(e)(4) is an infraction which carries a penalty of at least fifty dollars ($50.00) but not more than one hundred dollars ($100.00) and whenever evidence shall be presented in any court of the fact that any such nonconforming sign or markings are being used it shall be *prima facie* evidence in any court in the State of

North Carolina that the person, firm, or corporation with ownership of the property where said nonconforming signs or markings are located is responsible for violation of this section. Building inspectors and others responsible for North Carolina State Building Code violations specified in G.S. 143-138(h) where such signs are required by the Handicapped Section of the North Carolina State Building Code, may cause a citation to be issued for this violation and may also initiate any appropriate action or proceeding to correct such violation.

(3) A law-enforcement officer, including a security officer who has authority to enforce laws on the property of his employer as specified in Chapter 74A, may cause a vehicle parked in violation of this section to be towed; and such officer shall be a legal possessor as provided in G.S. 20-161(d)(2). This law-enforcement officer, or security officer, shall not be held to answer in any civil or criminal action to any owner, lienholder or other person legally entitled to the possession of any motor vehicle removed from such space pursuant to this section, except where such motor vehicle is willfully, maliciously, or negligently damaged in the removal from aforesaid space to place of storage.

(4) Notwithstanding any other provision of the General Statutes, the provisions of this section relative to handicapped parking shall be enforced by State, county, city and other municipal authorities in their respective jurisdictions whether on public or private property in the same manner as is used to enforce other parking laws and ordinances by said agencies."

Sec. 5. G.S. 20-169 reads as rewritten:

"§ *20-169. Powers of local authorities.*

Local authorities, except as expressly authorized by G.S. 20-141 and 20-158, shall have no power or authority to alter any speed limitations declared in this Article or to enact or enforce any rules or regulations contrary to the provisions of this Article, except that local authorities shall have power to provide by ordinances for the regulation of traffic by means of traffic or semaphores or other signaling devices on any portion of the highway where traffic is heavy or continuous and may prohibit other than one-way traffic upon certain highways, and may regulate the use of the highways by processions or assemblages and except that local authorities shall have the power to regulate the speed of vehicles on highways in public parks, but signs shall be erected giving notices of such special limits and regulations. ~~Signaling devices of a stop-light nature erected pursuant to this section and which emit alternate red and green lights~~

~~shall be so arranged and placed that the red light shall appear at the top and the green light shall appear at the bottom of the signaling unit. Provided, that all traffic signs, signals, markings, islands, and all other traffic-control devices installed or erected on streets or highways on the State highway system within the corporate limits of a municipality shall be subject to the approval of the Department of Transportation and be installed or erected in substantial conformance with the specifications set forth in the Manual on Uniform Traffic Control Devices for Streets and Highways, or any subsequent revisions of the same, published by the United States Department of Commerce, Bureau of Public Roads and dated June, 1961. Provided further that the Department of Transportation is authorized and directed to assume the cost of installing and erecting such traffic-control devices provided the same are installed and erected with the approval of the Department of Transportation and in conformity with this section, and the Department of Transportation is authorized and directed to assume the costs of altering existing traffic-control devices on the State highway system to conform to the said specifications set out above.~~"

Sec. 6. G.S. 160A-296(b) is repealed.

Sec. 7. This act becomes effective January 1, 1992. Any nonconforming sign or other traffic control device in use on the effective date of this act may remain in use until January 1, 1994.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 662 **CHAPTER 531**

AN ACT TO CHANGE THE LAW PROVIDING FOR THE DISPOSITION BY LAUNDRIES AND DRY CLEANERS OF UNCLAIMED GARMENTS AND TO AMEND THE LAW REGARDING DISPOSAL OF UNCLAIMED PROPERTY BY SHERIFFS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-67 reads as rewritten:

"*§ 66-67. Disposition by laundries and dry cleaning establishments of certain unclaimed clothing.*

(a) If any person ~~shall fail~~ fails to claim any garment, clothing, household article or other article delivered for laundering, cleaning or pressing to any laundry or dry cleaning establishment as defined in G.S. 105-85, or any dry cleaning establishment as defined in G.S. 105-74, for a period of ~~60~~ 90 days after the surrender of such articles for processing, the laundry or dry cleaning establishment ~~shall have~~

~~the right to~~ may dispose of such garments, clothing, household articles or other articles by whatever means it may choose, without liability or responsibility to the ~~owner.~~ owner, 30 days after a notice has been mailed by certified mail, return receipt requested, to the last known address of the owner of the garment, clothing, or other article, stating that the article will be disposed of unless it is redeemed within 30 days of the mailing of the notice. Provided, however, that before such laundry or dry cleaning establishment may claim the benefit of this section it shall at the time of receiving such garments, clothing, household articles or other articles, have a notice of dimensions of not less than eight and one-half by 11 inches, prominently displayed in a conspicuous place in the office, branch office or retail outlet where said clothes, garments or articles are received, if the same be received at an office, on which notice shall appear the words 'NOT RESPONSIBLE FOR GOODS LEFT ON HAND FOR MORE THAN ~~60 DAYS";~~ 90 DAYS'. ~~Provided further, that any garment or clothing or other article of a value of more than five hundred dollars ($500.00) may not be disposed of for a period of one year after the surrender of such articles for processing, in which case such garments, clothing or other articles may be disposed of 30 days after a notice thereof has been sent by certified mail, with return receipt requested, to the last known address of the owner of such garment, clothing or other article;~~

(b) If any person fails to claim any garment, clothing, household article or other article delivered to any laundry or dry cleaning establishment described in subsection (a) of this section and displaying the notice described in that subsection, for a period of 180 days, the laundry or dry cleaning establishment may, without giving notice to the owner, dispose of such garment, clothing, household article, or other article by whatever means it may choose, without liability or responsibility to the owner.

(c) ~~provided further, that the~~ The provisions of this section shall also be applicable with respect to the storage of garments, furs, rugs, clothing or other articles after the completion of the period for which storage was agreed to be provided."

Sec. 2. G.S. 15-13 reads as rewritten:

"*§ 15-13. Public sale 30 days after publication of notice.*

If said articles shall remain unclaimed or satisfactory evidence of ownership thereof not be presented to the sheriff or police department, as the case may be, for a period of 30 days after the publication of the notice provided for in G.S. 15-12, then the said sheriff or police department in whose custody such articles may be is hereby authorized and empowered to sell the same at public auction for cash to the highest bidder, either at the courthouse door of the county, the county

law enforcement headquarters if the sale is conducted by the sheriff, or at the police headquarters of the municipality in which the said articles of property are located, and at such sale to deliver the same to the purchaser or purchasers thereof."

Sec. 3. This act is effective upon ratification, and Section 1 applies to all articles delivered to a laundry or dry cleaning establishment on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 763 **CHAPTER 532**

AN ACT TO MAKE VARIOUS AMENDMENTS TO THE CITY OF DURHAM CHARTER.

The General Assembly of North Carolina enacts:

Section 1. Section 102.1 of the Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws as amended by Chapter 224 of the 1987 Session Laws, is rewritten to read:

"Sec. 102.1. *Additional Building and Housing Code Remedies.* In addition to any other remedy provided by law, the City Council may impose fines and penalties and take any other action authorized by G.S. 160A-175 in adopting, amending or enforcing any ordinance authorized by Parts 5 or 6 of Article 19 or Chapter 160A of the General Statutes."

Sec. 2. The sixth full paragraph of Section 17 of the Charter of the City of Durham, being Chapter 671 of the 1975 Sessions Laws, as amended by Chapter 1249 of the 1979 Session Laws, is rewritten to read:

"The City Council may delegate authority to the City Manager to purchase real property or any interest in real property, provided:

(1) The money for the purchase of such real property or interest in real property is available in the then current budget; and

(2) The City Manager, within 45 days following the purchase, shall submit to the City Council a written report setting forth the names of the persons from whom such property or property interest is purchased, a general description of the property or interest in property acquired, the purchase price paid therefor, and the intended use of the property or interest in property."

Sec. 3. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding a new section to read:

"Sec. 102.2. *Building and Housing Code Orders; Notice of Lis Pendens.* Any ordinance adopted by the City Council under Part 5 or Part 6 of Article 19 of Chapter 160A of the General Statutes may provide that any complaint and notice or order issued pursuant to that ordinance may be filed in the notice of *lis pendens* in the office of the Clerk of Superior Court of the county where the property is located. From the date of recording of such complaint and notice or order, it shall be binding upon the successors and assigns of the owners of the building or dwelling. The ordinance may authorize a public officer to cancel the notice of *lis pendens* in specified circumstances."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 794 **CHAPTER 533**

AN ACT TO ALLOW SAMPSON AND RICHMOND COUNTIES TO ACQUIRE PROPERTY FOR USE BY THOSE COUNTY BOARDS OF EDUCATION.

The General Assembly of North Carolina enacts:

Section 1. Chapter 885 of the 1989 Session Laws, reads as rewritten:

"Sec. 2. This act applies only to ~~Bladen and Columbus Counties.~~ Bladen, Columbus, Sampson, and Richmond Counties."

Sec. 2. The roof of any building acquired by Sampson County under this act shall have a pitch of no less than a two-inch rise per foot.

Sec. 3. This act is effective upon ratification and expires on January 1, 1995.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 838 **CHAPTER 534**

AN ACT TO MAKE THE DESTRUCTION OF ANY LAWFULLY GROWN CROP, PASTURE, OR PROVENDER A CRIMINAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-141 reads as rewritten:

"§ *14-141. Burning or otherwise destroying crops in the field.*

~~If any~~ Any person who shall willfully burn or destroy any other person's ~~corn, cotton, wheat, barley, rye, oats, buckwheat, rice,~~

~~tobacco, hay, straw, fodder, shucks or other provender in a stack, hill, rick or pen, or secured in any other way out of doors, or grass or sedge standing on the land, he~~ lawfully grown crop, pasture, or provender shall be punished as follows: ~~a Class I felon.~~

(1) If the damage is two thousand dollars ($2,000) or less, the person is guilty of a misdemeanor punishable by a term of imprisonment not to exceed two years, a fine, or both.

(2) If the damage is more than two thousand dollars ($2,000), the person is guilty of a Class I felony."

Sec. 2. This act becomes effective October 1, 1991, and applies to offenses committed on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 1044 **CHAPTER 535**

AN ACT TO ALLOW THE HOUSING OF SAFEKEEPERS IN THE SAME INPATIENT MEDICAL AND MENTAL HEALTH FACILITIES WITH CONVICTED PRISONERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 162-39 reads as rewritten:

"*§ 162-39. Transfer of prisoners when necessary for safety and security; application of section to municipalities.*

Whenever necessary for the safety of a prisoner held in any county jail or to avoid a breach of the peace in any county or whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the housing of such prisoners, the resident judge of the superior court or any judge holding superior court in the district or any district court judge may order the prisoner transferred to a fit and secure jail in some other county, or to a unit of the State prison system designated by the Secretary of Correction or his authorized representative, where the prisoner shall be held for such length of time as the judge may direct. The sheriff of the county from which the prisoner is removed shall be responsible for conveying the prisoner to the jail or prison unit where he is to be held, and for returning him to the common jail of the county from which he was transferred. The return shall be made at the expiration of the time designated in the court order directing the transfer unless the judge, by appropriate order, shall direct otherwise. The sheriff or keeper of the jail of the county designated in the court order, or the officer in charge of the prison unit designated by the Secretary of Correction, shall receive and release custody of the prisoner in accordance with the terms of the court order. If a prisoner is transferred to a unit of

the State prison system, the county from which the prisoner is transferred shall pay the Department of Correction for maintaining the prisoner for the time designated by the court at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a county is not required to reimburse the State for maintaining a prisoner who was a resident of another state or county at the time he committed the crime for which he is imprisoned. If the prisoner is transferred to a jail in some other county, the county from which the prisoner is transferred shall pay to the county receiving the prisoner in its jail the actual cost of maintaining the prisoner for the time designated by the court. Counties are hereby authorized to enter into contractual agreements with other counties to provide jail facilities to which prisoners may be transferred as deemed necessary under this section.

Whenever prisoners are arrested in such numbers that county jail facilities are insufficient and inadequate for the safekeeping of such prisoners, the resident judge of the superior court or any superior or district court judge holding court in the district may order the prisoners transferred to a unit of the State Department of Correction designated by the Secretary of Correction or his authorized representative, where the prisoners may be held for such length of time as the judge may direct, such detention to be in cell separate from that used for imprisonment of persons already convicted of ~~crimes.~~ crimes, except when admission to an inpatient prison medical or mental health unit is required to provide services deemed necessary by a prison health care clinician. The sheriff of the county from which the prisoners are removed shall be responsible for conveying the prisoners to the prison unit or units where they are to be held, and for returning them to the common jail of the county from which they were transferred. However, if due to the number of prisoners to be conveyed the sheriff is unable to provide adequate transportation, he may request the assistance of the Department of Correction, and the Department of Correction is hereby authorized and directed to cooperate with the sheriff and provide whatever assistance is available, both in vehicles and manpower, to accomplish the conveying of the prisoners to and from the county to the designated prison unit or units. The officer in charge of the prison unit designated by the Secretary of Correction or his authorized representative shall receive and release the custody of the prisoners in accordance with the terms of the court order. The county from which the prisoners are transferred shall pay to the Department of Correction the actual cost of transporting the prisoners and the cost of maintaining the prisoners at the per day, per inmate rate at which the Department of Correction pays a local jail for maintaining a prisoner, provided, however, that a

county is not required to reimburse the State for transporting or maintaining a prisoner who was a resident of another state or county at the time he was arrested. However, if the county commissioners shall certify to the Governor that the county is unable to pay the bill submitted by the State Department of Correction to the county for the services rendered, either in whole or in part, the Governor may recommend to the Council of State that the State of North Carolina assume and pay, in whole or in part, the obligation of the county to the Department of Correction, and upon approval of the Council of State the amount so approved shall be paid from Contingency and Emergency Fund to the Department of Correction.

When, due to an emergency, it is not feasible to obtain from a judge of the superior or district court a prior order of transfer, the sheriff of the county and the Department of Correction may exercise the authority hereinafter conferred; provided, however, that the sheriff shall, as soon as possible after the emergency, obtain an order from the judge authorizing the prisoners to be held in the designated place of confinement for such period as the judge may direct. All provisions of this section shall be applicable to municipalities whenever prisoners are arrested in such numbers that the municipal jail facilities and the county jail facilities are insufficient and inadequate for the safekeeping of the prisoners. The chief of police is hereby authorized to exercise the authority herein conferred upon the sheriff, and the municipality shall be liable for the cost of transporting and maintaining the prisoners to the same extent as a county would be unless action is taken by the Governor and Council of State as herein provided for counties which are unable to pay such costs.

The number of county prisoners incarcerated in the State prison system pursuant to safekeeping orders from the various counties may not exceed 200 at any given time unless authorized by the Secretary of Correction. The Secretary may refuse to accept any safekeeper and may return any safekeeper transferred under a safekeeping order when this capacity limit is reached."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 1111 **CHAPTER 536**

AN ACT TO REQUIRE PERSONS WHO ACCEPT USED GOODS ON CONSIGNMENT TO KEEP RECORDS OF THE CONSIGNED GOODS.

The General Assembly of North Carolina enacts:

Section 1. Article 13 of Chapter 66 of the General Statutes is amended by adding a new section to read:

"*§ 66-67.2. Persons who sell used goods on consignment must keep certain records.*

(a) A person who is engaged in the business of selling used tangible personal property on consignment must keep a record of each piece of property consigned to that person for sale. The record must contain all of the following information:

(1) A description of the property, including any model or serial number of the property.

(2) The name, residence address, telephone number, and drivers license number or other identifying number of the owner of the property.

(3) The date the property was consigned.

(4) The owner's stated value of the property.

(b) The consignee shall provide the owner with a copy of the record required by subsection (a) of this section.

(c) A person who fails to keep the records required by this section is guilty of a misdemeanor punishable by imprisonment for up to six months, a fine of up to five hundred dollars ($500.00), or both. A law enforcement agency may examine the records required to be kept under this section during business hours.

(d) This section does not apply to a motor vehicle.

(e) This section does not apply to any nonprofit organization exempt from taxation under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. § 501(c)(3))."

Sec. 2. This act becomes effective October 1, 1991, and applies to property consigned on or after that date.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 1131 **CHAPTER 537**

AN ACT TO PROVIDE THAT DEMOLITION ASPHALT MAY BE USED AS FILL.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-294 is amended by adding a new subsection to read:

"(m) Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility. Such demolition debris may

not be placed in the waters of the State or at or below the seasonal high water table."

Sec. 2. G.S. 130A-309.09(b) reads as rewritten:

"(b) Each designated local government shall initiate a recyclable materials recycling program by 1 July 1991. Counties and municipalities are encouraged to form cooperative arrangements for implementing recycling programs. The following requirements shall apply:

(1) Construction and demolition debris must be separated from the solid waste stream and segregated in separate locations at a solid waste disposal facility or other permitted site. Demolition debris consisting of used asphalt or used asphalt mixed with dirt, sand, gravel, rock, concrete, or similar nonhazardous material may be used as fill and need not be disposed of in a permitted landfill or solid waste disposal facility, provided that such demolition debris may not be placed in the waters of the State or at or below the seasonal high water table.

(2) At a minimum, a majority of marketable materials identified pursuant to G.S. 130A-309.14(b) must be separated from the solid waste stream prior to final disposal at a solid waste disposal facility and must be offered for recycling if the separation and collection of these materials is economically feasible and markets for such materials exist in such proximity as to make transportation of such materials to such markets economically feasible.

(3) Units of local government are encouraged to separate all plastics, metal, and all grades of paper for recycling prior to final disposal and are further encouraged to recycle yard trash and other mechanically treated solid waste into compost available for agricultural and other acceptable uses."

Sec. 3. This act is effective upon ratification and expires 1 July 1993.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 1222 **CHAPTER 538**

AN ACT TO AMEND VARIOUS STATUTES RELATING TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS, TO INCREASE THE PER GALLON FUEL EXCISE TAX, AND TO DEDICATE THE PROCEEDS OF THE TAX INCREASE TO THE CLEANUP OF LEAKING PETROLEUM UNDERGROUND STORAGE TANKS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-215.94A reads as rewritten:

"*§ 143-215.94A. Definitions.*

Unless a different meaning is required by the context, the following definitions shall apply throughout this Part:

(1) 'Commercial Fund' means the Commercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

(2) 'Commercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'commercial underground storage tank' does not include any:

a. Farm or residential underground storage tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

b. Underground storage tank of 1,100 gallons or less capacity used for storing heating oil for consumptive use on the premises where stored;

c. Underground storage tank of more than 1,100 gallon capacity used for storing heating oil for consumptive use on the premises where stored by four or fewer households;

d. Septic tank;

e. Pipeline facility (including gathering lines) regulated under:

1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 *et seq.*);

2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 *et seq.*); or

3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;

f. Surface impoundment, pit, pond, or lagoon;

g. Stormwater or wastewater collection system;

h. Flow-through process tank;

i. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

j. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel)

if the storage tank is situated upon or above the surface of the floor.

(3) 'Council' means the North Carolina Petroleum Underground Storage Tank Funds Council.

~~(2a)~~(4) 'Heating oil' means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, or No. 6 technical grades of fuel oil; other residual fuel oils, including Navy Special Fuel Oil and Bunker C; and other fuels when used as substitutes for one of these fuel oils for the purpose of heating.

(5) 'Loan Fund' means the Groundwater Protection Loan Fund.

~~(3)~~(6) 'Noncommercial Fund' means the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund established pursuant to this Part.

~~(4)~~(7) 'Noncommercial underground storage tank' means any one or combination of tanks (including underground pipes connected thereto) used to contain an accumulation of petroleum products, the volume of which (including the volume of the underground pipes connected thereto) is ten percent (10%) or more beneath the surface of the ground. The term 'noncommercial storage tank' does not include any:

a. Commercial underground storage tanks;
b. Septic tank;
c. Pipeline facility (including gathering lines) regulated under:
   1. The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. § 1671 *et seq.*);
   2. The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. § 2001 *et seq.*); or
   3. Any intrastate pipeline facility regulated under State laws comparable to the provisions of the Natural Gas Pipeline Safety Act of 1968 or the Hazardous Liquid Pipeline Safety Act of 1979;
d. Surface impoundment, pit, pond, or lagoon;
e. Stormwater or wastewater collection system;
f. Flow-through process tank;
g. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
h. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

~~(5)~~(8) 'Operator' means any person in control of, or having responsibility for, the operation of an underground storage tank.

~~(6)~~(9) 'Owner' means:

a. In the case of an underground storage tank in use on 8 November 1984, or brought into use after that date, any person who owns an underground storage tank used for the storage, use, or dispensing of petroleum products; and

b. In the case of an underground storage tank in use before 8 November 1984, but no longer in use on or after that date, any person who owned such tank immediately before the discontinuation of its use.

~~(7)~~(10) 'Petroleum' or 'petroleum product' means crude oil or any fraction thereof which is a liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute), including any such liquid which consists of a blend of petroleum and alcohol and which is intended for use as a motor fuel. The terms 'petroleum' and 'petroleum product' do not include any hazardous substance as defined in Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Pub. L. No. 96-510, 94 Stat. 2767, 42 U.S.C. § 9601(14) as amended; any substance regulated as a hazardous waste under Subtitle C of Title II of the Resource Conservation and Recovery Act of 1976, Pub. L. 94-580, 90 Stat. 2806, 42 U.S.C. § 6921 *et seq.*, as amended; or any mixture of petroleum or a petroleum product containing any such hazardous substance or hazardous waste in greater than *de minimis* quantities."

Sec. 2. G.S. 143-215.94B(b) reads as rewritten:

"(b) The Commercial Fund shall be used for the payment of the following costs up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from a commercial underground storage ~~tank:~~ tank that at the time the discharge or release is discovered or reported is beneath the surface of the ground or has been removed within the preceding 120 days:

(1) ~~The~~ For discharges or releases discovered or reported between 30 June 1988 and 31 December 1991 inclusive, the cleanup of environmental damage as required by G.S.

143-215.94E(a) in excess of fifty thousand dollars ($50,000) per ~~occurrence; and~~ occurrence.

(2) For discharges or releases discovered after 1 January 1992 and reported between 1 January 1992 and 31 December 1993 inclusive, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) per occurrence.

(3) For discharges or releases reported on or after 1 January 1994, the cleanup of environmental damage as required by G.S. 143-215.94E(a) in excess of twenty thousand dollars ($20,000) if, prior to the discharge or release, the commercial underground storage tank from which the discharge or release occurred met the performance standards applicable to tanks installed after 22 December 1988 or met the requirements that existing underground storage tanks must meet by 22 December 1998.

(4) For discharges or releases reported after 1 January 1994 from a commercial underground storage tank that does not meet the standards in subdivision (3) of this subsection, sixty percent (60%) of the costs per occurrence of the cleanup of environmental damage as required by G.S. 143-215.94E(a) that exceeds twenty thousand dollars ($20,000) but is not more than one hundred thirty-seven thousand five hundred dollars ($137,500) and one hundred percent (100%) of the costs above this amount, up to the limits established in this section.

~~(2)~~ (5) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(6) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision."

Sec. 3. G.S. 143-215.94B(d) reads as rewritten:

"(d) The Commercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle;

(2) The removal or replacement of any tank, pipe, fitting or related equipment;

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline;

(4) Costs intended to be paid by the Noncommercial Fund; or

(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part."

Sec. 3.1. G.S. 143-215.94C(d) is repealed.

Sec. 4. G.S. 143-215.94C, as amended by Section 3.1 of this act, reads as rewritten:

"*§ 143-215.94C. (Expires December 31, 1998) Commercial leaking petroleum underground storage tank cleanup fees.*

(a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

(1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity -- ~~forty-five dollars ($45.00).~~ one hundred dollars ($100.00).

(2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity -- ~~seventy-five dollars ($75.00).~~ one hundred fifty dollars ($150.00).

(b) The annual operating fee shall be determined on a calendar year basis. For petroleum commercial underground storage tanks in use on 1 January, the annual operating fee due for that year shall be as specified in subsection (a) of this section. For petroleum commercial underground storage tanks which are first placed in use in any year, the annual operating fee due for that year shall be determined by multiplying one-twelfth (1/12) of the amount specified in subsection (a) of this section by the number of months remaining in the calendar year. The annual operating fee shall be due and payable on the first day of the month in accordance with a staggered schedule established by the Department. The Department shall implement a staggered schedule to the end that the total amount of fees to be collected by the Department is approximately the same each month. A person who owns or operates more than one commercial petroleum underground storage tank may request that the fee for all tanks be due at the same time. A person who owns or operates 12 or more commercial petroleum storage tanks may request that the total of all fees be paid in four equal payments to be due on the first day of each calendar quarter.

(c) Beginning no later than sixty days before the first due date of the annual operating fee imposed by this section, any person who deposits a petroleum product in a commercial underground storage tank that would be subject to the annual operating fee shall, at least once in each calendar year during which such deposit of a petroleum product is made, notify the owner or operator of the duty to pay the annual operating fee. The requirement to notify pursuant to this subsection does not constitute a duty owed by the person depositing a

petroleum product in a commercial underground storage tank to the owner or operator and the person depositing a petroleum product in an underground storage tank shall not incur any liability to the owner or operator for failure to give notice of the duty to pay the operating fee.

(e) An owner or operator of a commercial underground storage tank who fails to pay a tank fee due under this section within 30 days of the date that the fee is due shall pay, in addition to the fee, a late penalty of five dollars ($5.00) per day per commercial underground storage tank, up to a maximum equal to the tank fee due."

Sec. 5. G.S. 143-215.94C(a), as amended by Section 4 of this act, reads as rewritten:

"(a) The owner or operator of a commercial petroleum underground storage tank shall pay to the Secretary for deposit into the Commercial Fund an annual operating fee according to the following schedule:

(1) For each petroleum commercial underground storage tank of 3,500 gallons or less capacity -- ~~one hundred dollars ($100.00).~~ one hundred fifty dollars ($150.00).

(2) For each petroleum commercial underground storage tank of more than 3,500 gallon capacity -- ~~one hundred fifty dollars ($150.00).~~ two hundred twenty-five dollars ($225.00)."

Sec. 6. G.S. 143-215.94D reads as rewritten:

"§ *143-215.94D. (Expires December 31, 1998) Noncommercial leaking petroleum underground storage tank cleanup fund.*

(a) There is established under the control and direction of the Department the Noncommercial Leaking Petroleum Underground Storage Tank Cleanup Fund. This Noncommercial Fund shall be a nonreverting revolving fund consisting of any monies appropriated for such purpose by the General Assembly or available to it from grants, or other monies paid to it or recovered on behalf of the Noncommercial Fund.

(b) The Noncommercial Fund shall be used for the payment of the ~~following~~ costs set out in subsection (b1) of this section, up to an aggregate maximum of one million dollars ($1,000,000) per occurrence resulting from a discharge or release of a petroleum product from:

(1) ~~(i) noncommercial~~ Noncommercial underground storage ~~tanks,~~ tanks if the discharge or release meets the minimum priority criteria for corrective action established by the Department.

(2) ~~(ii) commercial~~ Commercial underground storage tanks ~~where~~ if the owner or operator cannot be identified or fails to proceed with the ~~cleanup, and~~ cleanup.

(3) ~~(iii) commercial~~ Commercial underground storage tanks ~~which~~ that were taken out of operation prior to 1 January 1974 ~~where,~~ if, at the time the discharge or release is discovered, neither the owner or operator owns or leases the lands on which the tank is ~~located:~~ located.

(4) Commercial underground storage tanks if the owner of the commercial underground storage tank is the owner only as a result of owning the land on which the commercial underground storage tank is located, the owner did not know or have reason to know that the underground storage tank was located on the property, and the land was not transferred to the owner to avoid liability for the commercial underground storage tank.

(b1) The Noncommercial Fund shall be used for the payment of the costs of:

(1) The cleanup of environmental damage as required by G.S. 143-215.94E(a); and

(2) Compensation to third parties for bodily injury and property damage in excess of one hundred thousand dollars ($100,000) per occurrence.

(3) Reimbursing the State for damages or other costs incurred as a result of a loan from the Loan Fund. The per occurrence limit does not apply to reimbursements to the State under this subdivision.

(b2) The Noncommercial Fund may be used by the Department for the payment of costs necessary to render harmless any commercial or noncommercial underground storage tank from which a discharge or release has not occurred but which poses an imminent hazard to the environment if the owner or operator cannot be identified or located, or if the owner or operator fails to take action to render harmless the underground storage tank within 90 days after having been notified of the imminent hazard posed by the underground storage tank. The Secretary may seek to recover the costs of the action from the owner or operator as provided in G.S. 143-215.94G.

(c) The Noncommercial Fund is to be available on an occurrence basis, without regard to number of occurrences associated with tanks owned or operated by the same owner or operator.

(d) The Noncommercial Fund shall not be used for:

(1) Costs incurred as a result of a discharge or release from an aboveground tank, aboveground pipe or fitting not connected to an underground storage tank, or vehicle;

(2) The removal or replacement of any tank, pipe, fitting or related equipment;

(3) Costs incurred as a result of a discharge or release of petroleum from a transmission pipeline;
(4) Costs intended to be paid for by the Commercial Fund; or
(5) Costs associated with the administration of any underground storage tank program other than the program administered pursuant to this Part.

(e) The Noncommercial Fund shall be treated as a special trust fund and shall be credited with interest by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3."

Sec. 7. G.S. 143-215.94E reads as rewritten:

"*§ 143-215.94E. (Expires December 31, 1998) Rights and obligations of the owner and operator.*

(a) Upon a determination that a discharge or release of petroleum from an underground storage tank has occurred, the owner or operator shall notify the Department pursuant to G.S. 143-215.85. The owner or operator shall immediately undertake to collect and remove the discharge or release and to restore the area affected in accordance with the requirements of this Article.

(b) In the case of a discharge or release from a commercial underground storage tank where the owner or operator has been identified and has proceeded with cleanup, the owner or operator may elect to have the Commercial Fund pay or reimburse the owner or operator for any costs described in G.S. 143-215.94B(b) ~~which exceed fifty thousand dollars ($50,000) for the cleanup of environmental damage and one hundred thousand dollars ($100,000) for compensating third parties for bodily injury and property damage up to an aggregate maximum of one million dollars ($1,000,000) per discharge or release.~~ that exceed the amounts for which the owner or operator is responsible under that section. The sum of payments by the owner or operator and the payments from the Commercial Fund shall not exceed one million dollars ($1,000,000) per discharge or release.

(c) In the case of a discharge or release from a noncommercial underground storage tank, the owner or operator may elect to have the Noncommercial Fund pay or reimburse the owner or operator for the costs described in G.S. 143-215.94D(b) up to a maximum of one million dollars ($1,000,000) per discharge or release.

(d) In any case where the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) exceed one million dollars ($1,000,000), the provisions of Article 21A of this Chapter or any other applicable statute or common law regarding liability shall apply for the amount in excess of one million dollars ($1,000,000). Nothing contained in this Part shall limit or modify any liability that any party may have

pursuant to Article 21A of this Chapter, any other applicable statute, or at common law.

(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay for which prior approval was obtained and appropriate documentation was submitted, and any other costs ~~which~~ that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the Department for interim reimbursements to which he is entitled under this section on a quarterly basis.

(f) The Department shall not reimburse any owner or operator until the fund from which reimbursement will be made reaches one million dollars ($1,000,000).

(g) No owner or operator shall be reimbursed pursuant to this section, and the Department shall seek reimbursement of the appropriate fund or of the Department for any monies disbursed from the appropriate fund or expended by the Department if:

(1) The owner or operator has willfully violated any substantive law, rule, or regulation applicable to underground storage tanks and intended to prevent or mitigate discharges or releases or to facilitate the early detection of discharges or releases;

(2) The discharge or release is the result of the owner's or operator's willful or wanton misconduct; or

(3) The owner or operator has failed to pay any annual tank operating fee due pursuant to G.S. 143-215.94C.

(h) Subdivision (1) of subsection (g) of this section shall not be construed to limit the right of an owner or operator to contest notices of violation or orders issued by the Department."

Sec. 8. G.S. 143-215.94G reads as rewritten:

"*§ 143-215.94G. (Expires December 31, 1998) Authority of the Department to engage in cleanups; actions for fund reimbursement.*

(a) ~~Whenever a discharge or release of petroleum is from:~~

~~(1) A noncommercial underground storage tank;~~

~~(2) An underground storage tank where the owner or operator cannot be identified or located;~~

~~(3) An underground storage tank where the owner or operator fails to proceed as required by G.S. 143-215.94E(a); or~~

~~(4) A commercial underground storage tank which was taken out of operation prior to 1 January 1974 where, at the time the discharge or release is discovered, neither the owner or operator owns or leases the land on which the underground storage tank is located;~~

~~the~~ The Department ~~is authorized and empowered to~~ may use staff, equipment, or materials under its control or provided by other cooperating federal, State, or local agencies and to contract with any agent or contractor it deems appropriate to develop and implement a cleanup plan and to pay the costs authorized by G.S. 143-215.94D(b) from the Noncommercial ~~Fund.~~ Fund whenever there is a discharge or release of petroleum from any of the following:

(1) A noncommercial underground storage tank.

(2) An underground storage tank whose owner or operator cannot be identified or located.

(3) An underground storage tank whose owner or operator fails to proceed as required by G.S. 143-215.94E(a).

(4) A commercial underground storage tank taken out of operation prior to 1 January 1974 if, when the discharge or release is discovered, neither the owner nor operator owns or leases the land on which the underground storage tank is located.

(a1) Every State agency shall provide to the Department to the maximum extent feasible such staff, equipment, and materials as may be available and useful to the development and implementation of a cleanup program.

(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department ~~is authorized and empowered to~~ may supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under G.S. 143-215.94B(b), the Department shall require the owner or operator to submit documentation of all expenditures ~~which are~~ claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures for which prior approval was obtained from the

Department and any other expenditures ~~which~~ that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b).

(c) The Secretary shall keep a record of all expenses incurred for the services of State personnel and for the use of the State's equipment and material.

(d) The Secretary shall seek reimbursement through any legal means available, for:

(1) Any costs not authorized to be paid from either the Commercial or the Noncommercial Fund;

(2) The amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank is later identified or located;

(3) The amounts provided for in G.S. 143-215.94B(b) required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) where the owner or operator of a commercial underground storage tank failed to proceed as required by G.S. 143-215.94E(a);

(4) Any funds due under G.S. 143-215.94E(g); and

(5) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks.

(e) In the event that a civil action is commenced to secure reimbursement pursuant to subdivisions (1) through (4) of subsection (d) of this section, the Secretary may recover, in addition to any amount due, the costs of the action, including but not limited to reasonable attorney's fees and investigation expenses. Any monies received or recovered as reimbursement shall be paid into the appropriate fund or other source from which the expenditures were made.

(f) In the event that a recovery equal to or in excess of the amounts required to be paid for by the owner or operator pursuant to G.S. 143-215.94E(b) is recovered pursuant to subdivisions (2) and (3) of subsection (d) of this section for the costs described in G.S. 143-215.94B(b), the Department shall transfer funds from the Commercial Fund that would have been paid from the Commercial Fund pursuant to G.S. 143-215.94B(b) if the owner or operator had proceeded with the cleanup, but which were paid from the Noncommercial Fund, into the Noncommercial Fund."

Sec. 9. G.S. 143-215.94J(e) reads as rewritten:

"(e) If at any time either fund balance is insufficient to pay all valid claims against it, ~~such~~ the claims shall be paid in full in the order in which they ~~were finally determined.~~ are finally determined. The Secretary may retain not more than five hundred thousand dollars ($500,000) in the Noncommercial Fund as a contingency reserve and not apply the reserve to the claims. The Department may use the contingency reserve to conduct cleanups in accordance with G.S. 143-215.94G when an imminent hazard poses a threat to human health or to significant natural resources."

Sec. 10. G.S. 143-215.94L reads as rewritten:

"§ *143-215.94L. (Expires December 31, 1998) Adoption of rules; administrative procedure; short title; miscellaneous provisions.*

(a) The Commission may adopt rules necessary to implement the provisions of this Part. Except as may be otherwise specifically provided, the provisions of Chapter 150B of the General Statutes apply to this Part.

(b) This Part shall be administered by the Department consistent with the provisions of Title VI, § 601 of the Hazardous and Solid Waste Amendments of 1984, Pub. L. No. 98-616, 42 U.S.C. 6991 *et seq.*, as amended.

(c) The provisions of this Part and of Part 2 of this Article are intended to be complementary. This Part shall not be construed to limit the liability under G.S. 143-215.84(a) of any person or to limit the authority of the Department to take any action pursuant to G.S. 143-215.84(b).

(d) This Part shall be known and may be cited as the Leaking Petroleum Underground Storage Tank Cleanup Act of 1988."

Sec. 11. G.S. 143-215.94M reads as rewritten:

"§ *143-215.94M. (Expires December 31, 1998) ~~Annual reports.~~ Reports.*

(a) The Secretary shall present ~~an annual~~ a semiannual report to the ~~General Assembly~~ Joint Legislative Commission on Governmental Operations and the Environmental Review Commission which shall include at least the following:

(1) A list of all discharges or releases of petroleum from underground storage tanks;

(2) A list of all cleanups requiring State funding through the Noncommercial Fund and a comprehensive budget to complete such cleanups;

(3) A list of all cleanups undertaken by tank owners or operators and the status of these cleanups;

(4) A statement of receipts and disbursements for both funds;

(5) A statement of all claims against both funds including claims paid, claims denied, pending claims, and anticipated claims, and any other obligations; ~~and~~

(6) The adequacy of both funds to carry out the purposes of this ~~Part.~~ Part; and

(7) A statement of the condition of the Loan Fund and a summary of all activity under the Loan Fund.

(b) The ~~annual~~ semiannual reports required by this section shall be made by the Secretary on ~~1 January~~ 1 March and 1 September of each year beginning ~~1 January 1990.~~ 1 March 1992."

Sec. 12. Part 2A of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.94O. Petroleum Underground Storage Tank Funds Council.*

(a) The North Carolina Petroleum Underground Storage Tank Funds Council is created. The Council shall be composed of nine members as follows:

(1) An employee of the Department who is not employed by the section of the Division of Environmental Management responsible for the administration of the underground storage tank cleanup program who shall be appointed by the Secretary and who shall serve at the pleasure of the Secretary.

(2) Four members appointed by the General Assembly upon the recommendation of the President Pro Tempore of the Senate as follows:

a. One who shall, at the time of appointment, be actively connected with a petroleum refining company or an organization representing petroleum refining companies.

b. One who shall, at the time of appointment, be actively connected with a petroleum marketer or an organization representing petroleum marketers.

c. One who shall, at the time of appointment, be actively connected with an environmental insurance carrier or an organization representing environmental insurance carriers.

d. One who shall, at the time of appointment, be actively connected with a commercial lending institution or an organization representing commercial lending institutions.

(3) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives as follows:

a. One who shall, at the time of appointment, be an owner or operator of a convenience store that markets petroleum products or is actively connected with an organization representing convenience store owners or operators.

b. One who shall, at the time of appointment, be a motor fuel service station dealer or actively connected with an organization representing motor fuel service station dealers.

c. One who shall, at the time of appointment, be actively connected with an environmental advocacy organization.

d. One who shall, at the time of appointment, have special training and experience in the remediation of groundwater contamination resulting from leaking petroleum underground storage tanks.

(b) The members of the Council shall elect a chairman and a vice-chairman.

(c) All appointments made by the General Assembly shall be for a term of two years. Terms shall expire on 30 June except that members shall serve until their successors are appointed and duly qualified as provided in G.S. 128-7. The General Assembly shall have the power to remove, in accordance with G.S. 143B-13, any member appointed by the General Assembly.

(d) The Secretary shall provide staff assistance to the Council from the agency responsible for administration of the underground storage tank cleanup program.

(e) Members of the Council who are not State employees shall be reimbursed for their expenses in accordance with G.S. 138-5. Members of the Council who are State employees shall be reimbursed for their expenses in accordance with G.S. 138-6.

(f) The Council shall meet upon the call of the Chairman or a majority of its members. A majority of its members shall constitute a quorum for the transaction of business.

(g) The Council shall:

(1) Review the administration of the Commercial Fund, the Noncommercial Fund, and the Loan Fund.

(2) Advise the Secretary and the Commission on any matter relating to the effective and efficient implementation of this Part.

(3) Advise the Secretary on the adequacy of the funds to carry out the purposes of this Part.

(4) Recommend rules, in accordance with generally accepted standards prevailing among commercial lending institutions, for use by the Department in determining eligibility for loans, interest rates, terms, and conditions applicable to loans, and in managing the Loan Fund.

(5) Recommend rules and comment on proposed rules governing reimbursement of necessary and reasonable costs under G.S. 143-215.94E(e)."

Sec. 13. Part 2A of Article 21A of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.94P. Groundwater Protection Loan Fund.*

(a) There is established under the control and direction of the Department the Groundwater Protection Loan Fund. This Loan Fund shall be a nonreverting revolving fund consisting of any monies appropriated to it by the General Assembly or available to it from grants, and other monies paid to it or recovered on behalf of the Loan Fund. The Loan Fund shall be credited with interest on the Loan Fund by the State Treasurer pursuant to G.S. 147-69.2 and G.S. 147-69.3.

(b) The Loan Fund shall be used to provide loans to the owners of commercial petroleum underground storage tanks who are unable to secure conventional loans to upgrade or replace commercial underground storage tanks in use on 1 July 1991 so as to meet the performance standards applicable to tanks installed after 22 December 1988 or the requirements that existing underground storage tanks must meet by 22 December 1998. All applications for loans under this section must be received by the Department prior to 1 January 1995.

(c) Using generally accepted standards prevailing among commercial lending institutions, the Department shall adopt rules for use in managing the Loan Fund. The Department shall administer the loan program through existing commercial lending institutions. In the event that the Department is unable to arrange for the administration of the loan program through existing commercial institutions in all or any part of the State, the Department may administer the loan program through the Office of State Budget and Management. Each commercial institution or agency that administers any part of the loan program shall collect all charges for securing and administering each loan, including but not limited to application fees, recording costs, collection costs, and attorneys' fees from the borrower. Receipt of a loan from the Loan Fund is not a right, duty, or privilege; therefore, Article 3 of Chapter 150B of the General Statutes does not apply to the grant or denial of a loan from the Loan Fund.

(d) Funds received in repayment of loans made from the Loan Fund shall be deposited into the Loan Fund until the proceeds of all approved loans are disbursed to the borrowers. Thereafter, funds received in repayment of loans made from the Loan Fund and any other funds remaining in the Loan Fund shall be deposited in the Commercial Fund.

(e) In the event of a default on a loan from the Loan Fund or a violation of a loan agreement, the Secretary may request the Attorney General to bring a civil action for collection of the amount owed or

other appropriate relief. An action shall be filed in the superior court of the county where the loan recipient resides, where the loan recipient does business, or where the tanks replaced or upgraded by the loan are located. In an action, the Attorney General may recover all costs of litigation, including attorneys' fees.

(f) If the State incurs liability in extending credit from the Loan Fund and, as a result of the liability, the State is ordered to pay or, as part of a settlement agreement, agrees to pay damages or other costs, the State shall seek reimbursement for the amount of the damages or other costs from the following sources in the order listed:

(1) Any funds to which the State is entitled under any federal program providing for the cleanup of petroleum discharges or releases from underground storage tanks, including but not limited to the Leaking Underground Storage Tank Trust Fund established pursuant to 26 U.S.C. § 4081 and 42 U.S.C. § 6991b(h).

(2) The Noncommercial Fund.

(3) The Commercial Fund."

Sec. 14. G.S. 143-215.84(a) reads as rewritten:

"(a) Person Discharging. -- Any person having control over oil or other hazardous substances discharged in violation of this Article shall immediately undertake to collect and remove the discharge and to restore the area affected by the discharge as nearly as may be to the condition existing prior to the discharge. If it is not feasible to collect and remove the discharge, the person responsible shall take all practicable actions to contain, treat and disperse the discharge; but no chemicals or other dispersants or treatment materials which will be detrimental to the environment or natural resources shall be used for such purposes unless they shall have been previously approved by the Commission. The owner of an underground storage tank who is the owner of the tank only because he is the owner of the land on which the underground storage tank is located, who did not know or have reason to know that the underground storage tank was located on his property, and who did not become the owner of the land as the result of a transfer or transfers to avoid liability for the underground storage tank shall not be deemed to be responsible for a release or discharge from the underground storage tank."

Sec. 15. G.S. 105-434(a) reads as rewritten:

"(a) Tax. -- An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of ~~seventeen cents (17¢)~~ seventeen and one-half cents (17 1/2¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of

Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 16. G.S. 105-445 reads as rewritten:

"§ *105-445. Application of proceeds of gasoline tax.*

The amount of revenue collected under this Article attributable to a per gallon excise tax of one-half cent (1/2¢) a gallon shall be credited in equal amounts to the Commercial Leaking Petroleum Underground Storage Tank Fund and the Groundwater Protection Loan Fund. Of the remaining revenue collected under this Article, ~~Seventy-five~~ seventy-five percent (75%) ~~of the revenue collected under this Article~~ shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, the Groundwater Protection Loan Fund, the Highway ~~Fund~~ Fund, and the Highway Trust ~~Fund so that seventy-five percent (75%) of the amount of a refund is charged to the Highway Fund and twenty-five percent (25%) is charged to the Highway Trust Fund.~~ Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 17. G.S. 105-434(a), as amended by Section 15 of this act, reads as rewritten:

"(a) Tax. -- An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen and ~~one-half~~ one-quarter cents ~~(17 1/2¢)~~ (17 1/4¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 18. G.S. 105-445, as amended by Section 16 of this act, reads as rewritten:

"*§ 105-445. Application of proceeds of gasoline tax.*

The amount of revenue collected under this Article attributable to a per gallon excise tax of ~~one-half cent (1/2¢)~~ one-quarter cent (1/4¢) a gallon shall be credited ~~in equal amounts~~ to the Commercial Leaking Petroleum Underground Storage Tank ~~Fund and the Groundwater Protection Loan~~ Fund. Of the remaining revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Commercial Leaking Petroleum Underground Storage Tank Fund, ~~the Groundwater Protection Loan Fund,~~ the Highway Fund, and the Highway Trust

Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 19. G.S. 105-434(a), as amended by Sections 15 and 17 of this act, reads as rewritten:

"(a) Tax. -- An excise tax is levied on motor fuel sold, distributed, or used by a distributor within this State at a flat rate of seventeen ~~and one-quarter~~ cents ~~(17 1/4¢)~~ (17¢) per gallon, plus a variable rate of either three and one-half cents (3 1/2¢) per gallon or seven percent (7%) of the average wholesale price of motor fuel for the applicable base period, whichever is greater. The Secretary of Revenue shall semiannually determine the average wholesale price of motor fuel using information on refiner and gas plant operator sales prices of finished motor gasoline and No. 2 diesel fuel for resale, published by the United States Department of Energy in the 'Monthly Energy Review,' or equivalent data. The Secretary shall determine the average wholesale price of motor fuel by computing the average sales price of finished motor gasoline for the base period, computing the average sales price for No. 2 diesel fuel for the base period, and then computing a weighted average of the results of the first two computations based on the proportion of tax collected under this Article on motor fuel and Article 36A on fuel for the base period. The Secretary shall notify affected taxpayers of the tax rate to be in effect for each six-month period beginning January 1 and July 1.

To facilitate administration of the motor fuel tax, the Secretary shall convert the wholesale percentage component to a cents-per-gallon rate. The rate for the six-month period beginning January 1 shall be computed from data published for the six-month base period ending on the preceding September 30, and the rate for the six-month period beginning July 1 shall be computed from data published for the six-month base period ending on the preceding March 31. The cents-per-gallon rate computed by the Secretary shall be rounded to the nearest one-tenth of a cent (1/10¢). If the cents-per-gallon rate computed by the Secretary is exactly between two tenths of a cent, the rate shall be rounded up to the higher of the two."

Sec. 20. G.S. 105-445, as amended by Sections 16 and 18 of this act, reads as rewritten:

"§ *105-445. Application of proceeds of gasoline tax.*

~~The amount of revenue collected under this Article attributable to a per gallon excise tax of one-quarter cent (1/4¢) a gallon shall be credited to the Commercial Leaking Petroleum Underground Storage Tank Fund.~~ Of the ~~remaining~~ revenue collected under this Article, seventy-five percent (75%) shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed

under this Article shall be charged to the ~~Commercial Leaking Petroleum Underground Storage Tank Fund,~~ the Highway ~~Fund,~~ Fund and the Highway Trust Fund. The Secretary shall credit revenue or charge refunds to the appropriate Funds on a monthly basis."

Sec. 21. Section 5 of Chapter 1035 of the 1987 Session Laws, as amended by Section 16 of Chapter 652 of the 1989 Session Laws, reads as rewritten:

"Sec. 5. G.S. 143-215.94B through G.S. 143-215.94E, G.S. 143-215.94G, and G.S. 143-215.94J through G.S. ~~143-215.94N~~ 143-215.94P as enacted by Section 1 of this act as amended, and Section 2 of this act expire 31 December 1998. References to expired sections in unexpired sections shall be read to give effect to the unexpired sections. If either fund created by Section 1 of this act would be obligated under the provisions of this act with respect to any discharge or release reported to the Department of Natural Resources and Community Development or any successor department prior to the expiration of this act, the respective fund may continue to pay any costs incurred in accordance with this act to the extent that funds remain. In the event that funds remain in either fund after the expiration of this act and after all claims and other obligations of both funds have been paid, such remaining funds shall revert to the General Fund."

Sec. 22. G.S. 143-215.94E(e), as amended by Section 7 of this act, reads as rewritten:

"(e) When the owner or operator pays the costs described in G.S. 143-215.94B(b) or G.S. 143-215.94D(b) resulting from a discharge or release of petroleum from an underground storage tank, the owner or operator may seek reimbursement from the appropriate fund for any costs he may elect to have either the Commercial or the Noncommercial Fund pay in accordance with subsections (b) and (c) of this section. The Department shall reimburse the owner or operator for all costs he may elect to have the appropriate fund pay ~~for which prior approval was obtained and appropriate documentation was submitted, and any other costs~~ that the Department determines to be reasonable and necessary and for which appropriate documentation is submitted. The Commission shall adopt rules governing reimbursement of necessary and reasonable costs. An owner or operator whose claim for reimbursement is denied may appeal a decision of the Department as provided in Article 3 of Chapter 150B of the General Statutes. If the owner or operator is eligible for reimbursement under this section and the cleanup extends beyond a period of three months, the owner or operator may apply to the

Department for interim reimbursements to which he is entitled under this section on a quarterly basis."

Sec. 23. G.S. 143-215.94G(b), as amended by Section 8 of this act, reads as rewritten:

"(b) Whenever the discharge or release of a petroleum product is from a commercial underground storage tank, the Department may supervise the cleanup of environmental damage required by G.S. 143-215.94E(a). If the owner or operator elects to have the Commercial Fund reimburse or pay for any costs allowed under G.S. 143-215.94B(b), the Department shall require the owner or operator to submit documentation of all expenditures claimed for the purposes of establishing that the owner or operator has spent the amounts required to be paid by the owner or operator pursuant to and in accordance with G.S. 143-215.94E(b). The Department shall allow credit for all expenditures ~~for which prior approval was obtained from the Department and any other expenditures~~ that the Department determines to be reasonable and necessary. The Department may not pay for any costs for which the Commercial Fund was established until the owner or operator has paid the amounts specified in G.S. 143-215.94E(b)."

Sec. 24. The Environmental Management Commission shall adopt rules governing reimbursement of necessary and reasonable costs as required by G.S. 143-215.94E(e) as amended by Section 7 of this act. Rules governing reimbursement of necessary and reasonable costs shall become effective on or before 1 July 1992. To implement G.S. 143-215.94P as enacted by Section 13 of this act, the Department of Environment, Health, and Natural Resources shall adopt temporary or permanent rules that are effective on or before 1 March 1992.

Sec. 25. Section 3.1 of this act becomes effective 30 June 1991. Sections 3, 4, 15, and 16 of this act become effective 1 January 1992. Section 5 of this act becomes effective 1 January 1993. Sections 17 and 18 of this act become effective 1 January 1995. Sections 19 and 20 of this act become effective 1 January 1999. Sections 22 and 23 of this act become effective 1 July 1992. Sections 1, 2, 6 through 14, 21, 24, and 25 of this act are effective upon ratification.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

H.B. 1224 **CHAPTER 539**

AN ACT TO PROVIDE AN INCENTIVE FOR THE USE OF RECYCLED NEWSPRINT BY REQUIRING PUBLISHERS WHO

DO NOT USE A MINIMUM AMOUNT OF RECYCLED NEWSPRINT TO PAY A TAX ON NONRECYCLED NEWSPRINT.

Whereas, legislation enacted in 1989 provides that it is the policy of the State to promote methods of solid waste management that are alternatives to disposal in landfills, particularly recycling and reuse of solid waste, and requires local governments to initiate recycling programs for recyclable materials such as paper; and

Whereas, old newspapers make up a significant proportion of solid waste that can be recycled; and

Whereas, efforts to recycle old newspapers have been jeopardized by the lack of demand for increasing supplies of old newspapers; and

Whereas, studies have shown that encouraging the conversion of old newspapers into recycled newsprint is the most effective method of providing a market for old newspapers; and

Whereas, since 1976, North Carolina has encouraged the construction of facilities such as newsprint de-inking plants by offering franchise, income, and property tax benefits for capital investments in recycling and resource recovering facilities and equipment; and

Whereas, additional measures are needed to stimulate new efforts at converting old newspapers to recycled newsprint; and

Whereas, creating an economic incentive for publishers and printers to use recycled newsprint will result in increased pressure on paper suppliers to make more recycled paper, thus creating a market for old newspapers; and

Whereas, similar efforts in California, Connecticut, Florida, and Maryland have already created an increase in the demands for recycled newsprint in those areas; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. The General Assembly finds that the State of North Carolina has a compelling interest in reducing solid waste by encouraging the use of recycled newsprint made from postconsumer waste paper.

Sec. 2. Article 2 of Chapter 105 of the General Statutes is amended by adding a new section to read:

"*§ 105-102.6. Producers of newsprint publications.*

(a) Purpose. The purpose of this section is to provide an incentive for the use of recycled newsprint.

(b) Definitions. The following definitions apply in this section:

(1) Net tonnage of newsprint consumed. The weight in metric tons of all newsprint consumed by a producer, less the

weight in metric tons of any newsprint consumed by the producer diverted from solid waste by the producer.

(2) Newsprint. Uncoated paper, whether supercalendered or machine finished, made primarily from mechanical wood pulp combined with some chemical wood pulp, weighing between 24.5 and 35 pounds for 500 sheets of paper 2 feet by 3 feet in size, and having a brightness of less than 60.

(3) Postconsumer waste paper. Paper products, generated by a business or consumer, that have served their intended end uses and have been separated or diverted from solid waste.

(4) Producer. A person engaged in the business of producing publications printed on newsprint who acquires and uses newsprint for this business.

(5) Recycled content percentage. The percentage by weight of the total net tonnage of newsprint consumed by the producer that is postconsumer waste paper.

(c) Minimum Recycled Content Percentage. The recycled content percentage of every person engaged in the business of publishing or printing publications printed on newsprint consumed by a producer shall equal or exceed the following minimum recycled content percentages

During 1991 and 1992, twelve percent (12%).

During 1993, fifteen percent (15%).

During 1994, twenty percent (20%).

During 1995, twenty-five percent (25%).

During 1996, thirty percent (30%).

During 1997, thirty-five percent (35%).

After 1997, forty percent (40%).

(d) Tax. Every producer shall apply for and obtain from the Secretary of Revenue a newsprint producer tax reporting number. In addition, each producer whose recycled content percentage for a calendar quarter is less than the applicable minimum recycled content percentage provided in subsection (c) for a calendar quarter shall, within 10 days after the last day of the quarter, report to the Secretary the amount in metric tons by which (i) the applicable minimum recycled content percentage multiplied by the net tonnage of newsprint consumed by the producer in the preceding quarter exceeds (ii) the actual tonnage of postconsumer waste paper consumed by the producer during the preceding quarter, and shall pay a tax on the amount reported at the rate of fifteen dollars ($15.00) per ton. This tax is due when the report is filed. No county, city, or town may impose a license tax on the business taxed under this section.

(e) Exemption. The tax levied in this section does not apply to an amount calculated pursuant to subsection (d) to the extent the amount

is attributable solely to the producer's inability to obtain sufficient recycled content newsprint because (i) recycled content newsprint was not available at a price comparable to the price of virgin newsprint; (ii) recycled content newsprint of a quality comparable to virgin newsprint was not available; or (iii) recycled content newsprint was not available within a reasonable period of time during the reporting period. In order to claim the exemption provided in this subsection, a producer must certify to the Secretary of Revenue:

(1) The amount of virgin newsprint consumed by the producer during the reporting period solely for one of the reasons listed above.

(2) That the producer attempted to obtain recycled content newsprint from every manufacturer of recycled content newsprint that offered to sell recycled content newsprint to the producer within the preceding 12 months.

(3) The name, address, and telephone number of each manufacturer contacted, including the company name and the name of the company's individual representative or employee.

(f) Use of Proceeds. The Secretary of Revenue shall, on a quarterly basis, credit the net proceeds of the tax imposed by this section to the Solid Waste Management Trust Fund created in G.S. 130A-309.12."

Sec. 3. G.S. 105-109.1 reads as rewritten:

"§ *105-109.1. Interest.*

~~With respect to the~~ The taxes on gross receipts levied in G.S. 105-37.1(a), 105-38(f), and 105-65.1(b)(2), ~~and~~ the tax on installment paper dealers levied in G.S. 105-83(b), and the tax on producers of newsprint publications levied in G.S. 105-102.6, ~~all such taxes, including assessments of taxes or additional taxes,~~ shall bear interest at the rate established under G.S. 105-241.1(i) from the time ~~such~~ the taxes were due ~~to have been paid until paid, at rates established pursuant to G.S. 105-241.1(i),~~ until the taxes are paid."

Sec. 4. This act becomes effective October 1, 1991. The first quarterly report required by G.S. 105-102.6, as enacted by this act, is due on or before January 10, 1992.

In the General Assembly read three times and ratified this the 3rd day of July, 1991.

S.B. 281 **CHAPTER 540**

AN ACT TO PROVIDE REVIEW OFFICERS WITH SUBPOENA POWER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-116(i) reads as rewritten:

"(i) Review by Review Officer. -- Any party aggrieved by the decision of the administrative law judge may appeal that decision within 30 days after the receipt of notice of the decision by filing a written notice of appeal with the Superintendent of Public Instruction. The State Superintendent of Public Instruction shall appoint a Review Officer from a pool of review officers approved by the State Board of Education. A Review Officer ~~must~~ shall be an educator or other professional who is knowledgeable about special education and who possesses such other qualifications as may be established by the State Board of Education. The Review Officer may issue subpoenas upon his own motion or upon a written request.

No person may be appointed as a Review Officer if that person is an employee of an agency that has been involved in the education or care of the child whose parents have filed the petition (including an employee or official of the State Department of Education or the State Board of Education) or if the person is or has been employed by the local ~~Board of Education~~ board of education responsible for the education or care of the child whose parents have filed the petition. The decision of the Review Officer shall contain findings of fact and conclusions of law and becomes final unless an aggrieved party brings a civil action pursuant to subsection (k). A copy of the decision shall be served upon each party and a copy shall be furnished to the attorneys of record. The written notice shall contain a statement informing the parties of the right to file a civil action pursuant to subsection (k)."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 380 **CHAPTER 541**

AN ACT TO CLARIFY THE LAW RELATING TO CHILD SUPPORT PAYORS' NOTICE AND RESPONSIBILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 110-136.8(b) reads as rewritten:

"(b) Payor's responsibilities. A payor who has been properly served with a notice to withhold is required to:

(1) Withhold from the obligor's disposable income and, within 10 days of the date the obligor is paid, send to the clerk of superior court specified in the notice, the amount specified in the ~~notice,~~ notice and the date the amount was withheld,

but in no event more than the amount allowed by G.S. 110-136.6; however, if a lesser amount of disposable income is available for any pay period, the payor shall either: (a) compute and send the appropriate amount to the clerk of court, using the percentages as provided in G.S. 110-136.6, or (b) request the initiating party to inform the payor of the proper amount to be withheld for that period;

(2) Continue withholding until further notice from the IV-D agency or the clerk of superior court;

(3) Withhold for child support before withholding pursuant to any other legal process under State law against the same disposable income;

(4) Begin withholding from the first payment due the obligor in the first pay period that occurs 14 days following the date the notice of the obligation to withhold was served on the payor;

(5) Promptly notify the obligee in a IV-D case, or the clerk of superior court in a non-IV-D case, in writing:

a. If there is more than one child support withholding for the obligor;

b. When the obligor terminates employment or otherwise ceases to be entitled to disposable income from the payor, and provide the obligor's last known address, and the name and address of his new employer, if known;

c. Of the payor's inability to comply with the withholding for any reason; and

(6) Cooperate fully with the initiating party in the verification of the amount of the obligor's disposable income."

Sec. 2. G.S. 110-136.8(d) reads as rewritten:

"(d) The payor may combine amounts withheld from obligors' disposable incomes in a single payment to each clerk of superior court if the payor separately identifies by name and case number the portion of the single payment attributable to each individual ~~obligor,~~ obligor and the date that each payment was withheld from the obligor's disposable income."

Sec. 3. G.S. 110-129(10) reads as rewritten:

"(10) 'Mistake of fact' means that the obligor:

(a) Is not in arrears in an amount equal to the support payable for one month; or

(b) Did not request that withholding begin, if withholding is pursuant to a purported request by the obligor for withholding; or

(c) Is not the person subject to the court order of support for the child named in the advance notice of withholding; or

(d) Does not owe the amount of current support or arrearages specified in the advance notice or motion of ~~withholding.~~ withholding; or

(e) Has a rate of withholding which exceeds the amount of support specified in the court order."

Sec. 4. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 458 **CHAPTER 542**

AN ACT MAKING TECHNICAL CHANGES TO THE LAWS ADMINISTERED BY THE OFFICE OF THE STATE CONTROLLER, TO REPEAL OBSOLETE LAWS, AND TO REENACT AN INADVERTENTLY REPEALED PREVIOUS LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 115C-275 reads as rewritten:

"§ *115C-275. Vacancies in office of superintendent.*

In case of vacancy by death, resignation, or otherwise, in the office of a superintendent, such vacancy shall be filled by the local board of education in which such vacancy occurred. If the vacancy is filled on a temporary basis, subject to the same approvals and to the same educational qualifications as provided for superintendents, the individual appointed to fill the vacancy on a temporary basis shall be paid the salary provided for superintendents. During the time any superintendent is on an approved leave of absence, without pay, an acting superintendent may be appointed in the same manner to serve during the interim period, which appointment shall be subject to the same approvals and to the same educational qualifications as provided for superintendents. In case such position is not filled immediately on a permanent or temporary basis, or in case of absence of a superintendent on account of illness or other approved reason, the board of education, by resolution duly adopted and recorded in the minutes of such board, may assign to an employee of such school board, with the approval of the Superintendent of Public Instruction, any duty or duties of such superintendent which necessity requires be performed during such ~~time: Provided, that if~~ time. If the superintendent's duty of signing warrants and checks is ~~so~~ assigned, ~~said~~ the board shall give proper notice immediately to the State Controller and to the appropriate local disbursing ~~officials.~~ official."

Sec. 2. Article 3 of Chapter 116 of the General Statutes is repealed.

Sec. 3. G.S. 138-1 reads as rewritten:

"*§ 138-1. Annual salaries payable ~~monthly.~~ at periodic intervals.*

All annual salaries shall be paid ~~monthly except employees of the institutions of the Department of Human Resources may be paid biweekly effective July 1, 1974.~~ at least monthly and may be paid twice a month, every two weeks, or weekly. A unit of State government whose payroll is processed through the central payroll disbursing account of the Office of the State Controller must obtain the approval of the State Controller to pay annual salaries on any basis other than a monthly basis."

Sec. 4. G.S. 138-4 reads as rewritten:

"*§ 138-4. Governor to set salaries of administrative officers; exceptions; longevity pay.*

The salaries of all State administrative officers not subject to the State Personnel Act shall ~~be payable in equal monthly installments, and if no provision is otherwise made by law, shall~~ be set by the ~~Governor.~~ Governor, unless a law provides otherwise.

Whenever by law it is provided that a salary shall be fixed or set by the General Assembly in the Current Operations Appropriations Act, and that office or position is filled by appointment of the Governor, or the appointment is subject to the approval of the Governor, or is made by a commission a majority of whose members are appointed by the Governor, then the Governor may, increase or decrease the salary of a new appointee by a maximum of ten percent (10%) over or under the salary of that position as provided in the Current Operations Appropriations Act, such increased or decreased salary to remain in effect until changed by the General Assembly or until the end of the fiscal year, whichever occurs first. The Governor under this paragraph may not increase the salary of any nonelected official above the level set in the Current Operations Appropriations Act for any member of the Council of State. This section does not apply to any office filled by election by the people, and does not apply to any office in the legislative or judicial branches.

Prior to taking any action under this section, the Governor may consult with the Advisory Budget Commission.

Officials whose salaries are covered by the provisions of this section shall be eligible for longevity pay on the same basis as is provided to employees of the State who are subject to the State Personnel Act."

Sec. 5. G.S. 143-3.2(a) reads as rewritten:

"(a) The State Controller shall have the exclusive responsibility for the issuance of all warrants for the payment of money upon the State Treasurer. All warrants upon the State Treasurer shall be signed by the State Controller, who before issuing them shall determine the legality of payment and the correctness of the accounts.

When the State Controller finds it expedient to do so because of a State agency's size and location, the State Controller may authorize a State agency to make expenditures through a disbursing account with the State Treasurer. The State Controller shall authorize the Judicial Department and the General Assembly to make expenditures through such disbursing accounts. All deposits in these disbursing accounts shall be by the State Controller's warrant. A copy of each voucher making withdrawals from these disbursing accounts and any supporting data required by the State Controller shall be forwarded to the Office of the State Controller monthly or as otherwise required by the State Controller. Supporting data for a voucher making a withdrawal from one of these disbursing accounts to meet a payroll shall include the amount of the payroll and the employees whose compensation is part of the payroll.

A central payroll unit operating under the Office of the State Controller may make deposits and withdrawals directly to and from a disbursing account. The disbursing account shall constitute a revolving fund for servicing payrolls passed through the central payroll unit.

The State Controller may use a facsimile signature machine in affixing his signature to warrants."

Sec. 6. G.S. 143-11 reads as rewritten:

"*§ 143-11. Survey of departments.*

On or before the fifteenth day of December, biennially in the even-numbered years, the Director shall make a complete, careful survey of the operation and management of all the departments, bureaus, divisions, officers, boards, commissions, institutions, and agencies and undertakings of the State and all persons or corporations who use or expend ~~funds as hereinbefore defined.~~ State funds, in the interest of economy and efficiency, and of obtaining a working knowledge upon which to base recommendations to the General Assembly as to appropriations for maintenance and special funds and capital expenditures for the succeeding biennium. If the Director and the Commission shall agree in their recommendations for the budget for the next biennial period, he shall prepare their report in the form of a proposed budget, together with such comment and recommendations as they may deem proper to make. If the Director and Commission shall not agree in substantial particulars, the Director shall prepare the proposed budget based on his own conclusions and judgment, and the Commission or any of its members retain the right to submit separately to the General Assembly such statement of disagreement and the particulars thereof as representing their views. The budget report shall contain a complete and itemized plan of all proposed expenditures for each State department, bureau, board,

division, institution, commission, State agency or undertaking, person or corporation who ~~receive~~ receives or may receive for use and expenditure any State ~~funds as hereinbefore defined,~~ funds, in accordance with the classification adopted by the State Controller, and of the estimated revenues and borrowings for each year in the ensuing biennial period beginning with the first day of July thereafter. Opposite each item of the proposed expenditures, the budget shall show in separate parallel columns the amount expended for the last preceding appropriation year, for the current appropriation year, and the increase or decrease. The budget shall clearly differentiate between general fund expenditures for operating and maintenance, special fund expenditures for any purpose, and proposed capital outlays.

The Director shall accompany the budget with:

(1) A budget message supporting his recommendations and outlining a financial policy and program for the ensuing biennium. The message will include an explanation of increase or decrease over past expenditures, a discussion of proposed changes in existing revenue laws and proposed bond issues, their purpose, the amount, rate of interest, term, the requirements to be attached to their issuance and the effect such issues will have upon the redemption and annual interest charges of the State debt.

(2) State Controller reports including:

a. An itemized and complete financial statement for the State at the close of the last preceding fiscal year ending June 30.

b. A statement of special funds.

(3) ~~c.~~ A statement showing the itemized estimates of the condition of the State treasury as of the beginning and end of each of the next two appropriation years.

~~(3)~~ (4) A report on the fees charged by each State department, bureau, division, board, commission, institution, and agency during the previous fiscal year, the statutory or regulatory authority for each fee, the amount of the fee, when the amount of the fee was last changed, the number of times the fee was collected during the prior fiscal year, and the total receipts from the fee during the prior fiscal year.

It shall be a compliance with this section by each incoming Governor, at the first session of the General Assembly in his term, to submit the budget report with the message of the outgoing Governor, if he shall deem it proper to prepare such message, together with any comments or recommendations thereon that he may see fit to make,

either at the time of the submission of the said report to the General Assembly, or at such other time, or times, as he may elect and fix.

The function of the Advisory Budget Commission under this section applies only if the Director of the Budget consults with the Commission in preparation of the budget."

Sec. 7. G.S. 143-34.1 reads as rewritten:

"*§ 143-34.1. ~~Payrolls submitted to the Director of the Budget; approval of payment of vouchers; payment of required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security; support of hospital and medical insurance programs for retired members of certain associations, organizations, boards, etc.; dependent care assistance program.~~ Positions included in the State's payroll must be approved by the Director of Budget; payment of benefits and other salary-related items must be made from same source as salary; dependent care assistance program authorized; flexible compensation benefits authorized.*

(a) ~~All payrolls of all departments, institutions, and agencies of the State government shall, prior to the issuance of vouchers in payment therefor, be submitted to the Director of the Budget, who shall check the same against the appropriations to such departments, institutions and agencies for such purposes, and if found to be within said appropriations, he shall approve the same and return one to the department, institution or agency submitting same and transmit one copy to the State Controller, and no voucher in payment of said payroll or any item thereon shall be honored or paid except and to the extent that the same has been approved by the Director of the Budget.~~ Before a department, institution, or other agency of State government establishes a new position or changes the funding of an existing position, the agency must submit the proposed action to the Director for approval. The Director shall review the proposed action to ensure that it is within the amount appropriated to the agency. If the Director approves the action, the Director shall notify the agency and the State Controller of the approval. The State Controller may not honor a voucher in payment of a payroll that includes a new position or a change in an existing position that has not been approved by the Director.

(b) Required employer salary-related contributions for retirement benefits, death benefits, disability salary continuation and Social Security for employees whose salaries are paid from general fund or highway fund revenues, or from department, office, institutional or agency receipts, or from nonstate funds, shall be paid from the same source as the source of the employees' salaries. In those instances in which an employee's salary is paid in part from the general fund, or the highway fund, and in part from the department, office,

institutional or agency receipts, or from nonstate funds, the required salary-related contributions shall be paid from the general fund, or the highway fund, only to the extent of the proportionate part paid from the general fund, or highway fund, in support of the salary of such employee, and the remainder of the employer's contribution requirements shall be paid from the same source which supplies the remainder of such employee's salary. The requirements of this section as to the source of payment are also applicable to payments on behalf of the employee for hospital-medical insurance, longevity payments, salary increments, and legislative salary increases. The State Controller shall approve the method of payment by State departments, offices, institutions and agencies for employer salary-related requirements of this section, and determine the applicability of the section to an employer's salary-related contribution or payment in behalf of an employee.

(c) The Director of the Budget is authorized to provide eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 a program of dependent care assistance as available under Section 129 and related sections of the Internal Revenue Code of 1986, as amended. The Director of the Budget may authorize State departments, institutions, and agencies to enter into annual agreements with employees who elect to participate in the program to provide for a reduction in salary. Should the Director decide to contract with a third party to administer the terms and conditions of a program of dependent care assistance, he may select a contractor only upon a thorough and completely competitive procurement process.

(d) Notwithstanding any other provisions of law relating to the salaries of officers and employees of departments, institutions, and agencies of State government, the Director of the Budget is authorized to provide a plan of flexible compensation to eligible officers and employees of State departments, institutions, and agencies not covered by the provisions of G.S. 116-17.2 for benefits available under Section 125 and related sections of the Internal Revenue Code of 1986 as amended. This plan shall not include those benefits provided to employees and officers under Article 1A of Chapter 120 of the General Statutes and Articles 1, 3, 4, and 6 of Chapter 135 of the General Statutes nor any vacation leave, sick leave, or any other leave that may be carried forward from year to year by employees as a form of deferred compensation. In providing a plan of flexible compensation, the Director of the Budget may authorize State departments, institutions, and agencies to enter into agreements with their employees for reductions in the salaries of employees electing to participate in the plan of flexible compensation provided by this

section. Should the Director of the Budget decide to contract with a third party to administer the terms and conditions of a plan of flexible compensation as provided by this section, it may select such a contractor only upon a thorough and completely advertised competitive procurement process."

Sec. 8. G.S. 143-47.7(a) reads as rewritten:

"(a) Within 60 days after acceptance of appointment by a person appointed to public office, the appointing authority shall file written notice of such appointment with the Governor, the Secretary of State, the State Legislative Library, the State ~~Library and the State Disbursing Officer.~~ Library, and the State Controller. For the purposes of this section, a copy of the letter from the appointing authority or a copy of the properly executed Commission of Appointment shall be sufficient to be filed if such copy contains the information required in subsection (b) of this section."

Sec. 9. G.S. 143-340(25) is repealed.

Sec. 10. G.S. 143-341(8)j. reads as rewritten:

"j. To establish and operate ~~a central telephone system,~~ central mimeographing and duplicating services, central stenographical and clerical pools, and other central services, if the Governor after appropriate investigation deems it advisable from the standpoint of efficiency and economy in operation to establish any or all such services. The Secretary may allocate and charge against the respective agencies their proportionate part of the cost of maintenance and operation of the central services which are established, in accordance with the rules adopted by him and approved by the Governor and Council of State pursuant to paragraph k, below. Upon the establishment of central mimeographing and duplicating services, the Secretary may, with the approval of the Governor, require any State agency to be served by those central services to transfer to the Department ownership, custody, and control of any or all mimeographing and duplicating equipment and supplies within the ownership, custody, or control of such agency."

Sec. 11. G.S. 143B-368(b) is repealed.

Sec. 12. G.S. 143B-370 is repealed.

Sec. 13. G.S. 143B-426.35 reads as rewritten:

"§ *143B-426.35. Definitions.*

As used in this Part, unless the context clearly indicates otherwise:

(1) 'Accounting system' means the total structure of records and procedures which discover, record, classify, and report

information on the financial position and operating results of a governmental unit or any of its funds, balanced account groups, and organizational components.

(2) 'Office' means the Office of the State Controller.

(3) 'State agency' means any State agency as defined in G.S. ~~147-64.4(b)(2).~~ 147-64.4(4).

(4) 'State funds' means any moneys appropriated by the General Assembly, or moneys collected by or for the State, or any agency of the State, pursuant to the authority granted in any State laws."

Sec. 14. G.S. 143B-426.39 reads as rewritten:

"§ *143B-426.39. Powers and duties of the State Controller.*

The State Controller shall:

(1) Prescribe, develop, operate, and maintain in accordance with generally accepted principles of governmental accounting, a uniform State accounting system for all State agencies. The system shall be designed to assure compliance with all legal and constitutional requirements including those associated with the receipt and expenditure of, and the accountability for public funds.

(2) On the recommendation of the State Auditor, prescribe and supervise the installation of any changes in the accounting systems of an agency that, in the judgement of the State Controller, are necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable and meaningful statements and reports. The State Controller shall be responsible for seeing that a new system is designed to accumulate information required for the preparation of budget reports and other financial reports.

(3) Maintain complete, accurate and current financial records that set out all revenues, charges against funds, fund and appropriation balances, interfund transfers, outstanding vouchers, and encumbrances for all State funds and other public funds including trust funds and institutional funds available to, encumbered, or expended by each State agency, in a manner consistent with the uniform State accounting system.

(4) Prescribe the uniform classifications of accounts to be used by all State agencies including receipts, expenditures, assets, liabilities, fund types, organization codes, and purposes. The State Controller shall also, after consultation with the Office of State Budget and Management, prescribe a form for the periodic reporting of financial accounts,

transactions, and other matters that is compatible with systems and reports required by the State Controller under this section. Additional records, accounts, and accounting systems may be maintained by agencies when required for reporting to funding sources provided prior approval is obtained from the State Controller.

(5) Prescribe the manner in which disbursements of the State agencies shall be made, in accordance with G.S. 143-3.

(6) Operate a central payroll system, in accordance with G.S. 143-3.2 and 143-34.1.

(7) Keep a record of the appropriations, allotments, expenditures, and revenues of each State agency, in accordance with G.S. 143-20.

(8) Make appropriate reconciliations with the balances and accounts kept by the State Treasurer.

(9) Develop, implement, and amend as necessary a uniform statewide cash management plan ~~to carry out the cash management policy~~ for all State agencies in accordance with G.S. 147-86.11.

(10) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management each month, a report summarizing by State agency and appropriation or other fund source, the results of financial transactions. This report shall be in the form that will most clearly and accurately set out the current fiscal condition of the State. The State Controller shall also furnish each State agency a report of its transactions by appropriation or other fund source in a form that will clearly and accurately present the fiscal activities and condition of the appropriation or fund source.

(11) Prepare and submit to the Governor, the State Auditor, the State Treasurer, and the Office of State Budget and Management, at the end of each quarter, a report on the financial condition and results of operations of the State entity for the period ended. This report shall clearly and accurately present the condition of all State funds and appropriation balances and shall include comments, recommendations, and concerns regarding the fiscal affairs and condition of the State.

(12) Prepare on or before October 31 of each year, a Comprehensive Annual Financial Report of the preceding fiscal year, in accordance with G.S. 143-20.1.

(13) Perform additional functions and duties assigned to the State Controller, within the scope and context of the

Executive Budget Act, Chapter 143, Article 1 of the General Statutes.

(14) With respect to ~~the principal State offices and Departments as defined in G.S. 143A-11 and G.S. 143B-6, or a division thereof,~~ State agencies, exercise general coordinating authority for all telecommunications matters relating to the internal management and operations of ~~State government,~~ these agencies. In discharging that responsibility the State Controller may in cooperation with affected State agency heads, do such of the following things as he deems necessary and advisable:

a. Provide for the establishment, management, and operation, through either State ownership or commercial ~~leasing~~ leasing, of the following systems and services as they affect the internal management and operation of State ~~government:~~ agencies:
   1. Central telephone systems and telephone networks;
   2. Teleprocessing systems;
   3. Teletype and facsimile services;
   4. Satellite services;
   5. Closed-circuit TV systems;
   6. Two-way radio systems;
   7. Microwave systems;
   8. Related systems based on telecommunication technologies.

b. ~~Coordinate~~ With the approval of the Information Technology Council, coordinate the development of cost-sharing systems for respective user agencies for their proportionate parts of the cost of maintenance and operation of the systems and services listed in item 'a.' of this ~~subdivision, in accordance with the rules and regulations adopted by the Governor and approved by the Council of State, pursuant to G.S. 143-341(8)k.~~ subdivision.

c. Assist in the development of coordinated telecommunications services or systems within and among all State agencies ~~and departments,~~ and recommend, where appropriate, cooperative utilization of telecommunication facilities by aggregating users.

d. Perform traffic analysis and engineering for all telecommunications services and systems listed in item 'a.' of this subdivision.

e. Pursuant to G.S. 143-49, establish telecommunications specifications and designs so as to promote and support

compatibility of the systems within State ~~government.~~ agencies.

f. Pursuant to G.S. 143-49 and G.S. 143-50, coordinate the review of requests by State agencies for the procurement of telecommunications systems or services.

g. Pursuant to G.S. 143-341 and Chapter 146 of the General Statutes, coordinate the review of requests by State agencies for State government property acquisition, disposition, or construction for telecommunications systems requirements.

h. Provide a periodic inventory of telecommunications costs, facilities, systems, and personnel within State ~~government.~~ agencies.

i. Promote, coordinate, and assist in the design and engineering of emergency telecommunications systems, including but not limited to the 911 emergency telephone number program, Emergency Medical Services, and other emergency telecommunications services.

j. Perform frequency coordination and management for State agencies and local governments, including all public safety radio service frequencies, in accordance with the rules and regulations of the Federal Communications Commission or any successor federal agency.

k. Advise all State agencies ~~and institutions~~ on telecommunications management planning and related matters and provide through the State Personnel Training Center or the State Information Processing Services training to users within State ~~government~~ agencies in telecommunications technology and systems.

l. Assist and coordinate the development of policies and long-range plans, consistent with the protection of citizens' rights to privacy and access to information, for the acquisition and use of telecommunications systems; and base such policies and plans on current information about State telecommunications activities in relation to the full range of emerging technologies.

m. Work cooperatively with the North Carolina Agency for Public Telecommunications in furthering the purpose of this subdivision.

The provisions of this subdivision shall not apply to the ~~Police Information Network (P.I.N.)~~ Criminal Information

Division of the Department of Justice or to the Judicial Information System in the Judicial Department.

(15) Provide cities, counties, and other local governmental units with access to a central telecommunications system or service established under subdivision (14) of this section for State agencies. Access shall be provided on the same cost basis that applies to State agencies."

Sec. 15. G.S. 147-86.11 reads as rewritten:

"*§ 147-86.11. Cash management for the State.*

(a) The ~~[State Controller],~~ State Controller, with the advice and assistance of the State Treasurer, the State Budget Officer, and the State Auditor, shall develop, implement and amend as necessary a uniform statewide plan to carry out the cash management policy for all State agencies. The State Auditor shall report annually to the Advisory Budget Commission and the General Assembly on the implementation of the plan as shown in the audits completed during the prior fiscal year. The State Treasurer shall recommend periodically to the General Assembly any implementing legislation necessary or desirable in the furtherance of the State policy. When used in this section, 'State agency' means any agency, institution, bureau, board, commission or officer of the State; however, except as provided in G.S. 147-86.12, 147-86.13, and 147-86.14, this Article shall not apply to the agencies, institutions, bureaus, boards, commissions and officers of the General Court of Justice as defined in Article IV of the North Carolina Constitution or to the local school administrative units and community colleges and their officers and employees.

(b) The State Auditor pursuant to his authority under G.S. 147-64.6 shall monitor agency compliance with this Article, and make any comments, suggestions, and recommendations he deems advisable to the agencies.

(c) The State Treasurer shall publish a quarterly report on all funds in the control or custody of the State Treasurer showing cash balances on hand, investments of cash balances and a comparative analysis of earnings and investment performances.

(d) The statewide cash management plan ~~adopted and implemented pursuant to this section~~ shall provide that any net earnings on invested funds, whose beneficial owner is not the State or a local governmental unit, shall be paid to the beneficial owners of the funds. 'Net earnings' are the amounts remaining after allowance for the cost of administration, management, and operation of the invested funds.

(e) ~~The receipt section of the uniform statewide plan promulgated by the Director of the Budget~~ For moneys received or to be received, the statewide cash management plan shall provide at a minimum that:

(1) Except as otherwise provided by law, moneys received by employees of State agencies in the normal course of their employment shall be deposited as follows:
   a. Moneys received in trust for specific beneficiaries for which the employee-custodian has a duty to invest shall be deposited with the State Treasurer under the provisions of G.S. 147-69.3.
   b. All other moneys received shall be deposited with the State Treasurer pursuant to G.S. 147-77 and G.S. 147-69.1.

(2) Moneys received shall be deposited daily in the form and amounts received, except as otherwise provided by statute;

(3) Moneys due to a State agency by another governmental agency or by private persons shall be promptly billed, collected and deposited;

(4) Unpaid billings due to a State agency shall be turned over to the Attorney General for collection no more than 90 days after the due date of the billing; and

(5) Moneys received in the form of warrants drawn on the State Treasurer shall be deposited by the State agency directly with the State Treasurer and not through the banking system, unless otherwise approved by the State Treasurer.

(f) ~~The disbursement section of the statewide plan adopted by the Director of the Budget~~ For the disbursement of money, the statewide cash management plan shall provide at a minimum that:

(1) Moneys deposited with the State Treasurer remain on deposit with the State Treasurer until final disbursement to the ultimate payee;

(2) The order in which appropriations and other available resources are expended shall be subject to the provisions of G.S. 143-27 regardless of whether the State agency disbursing or expending the moneys is subject to the Executive Budget ~~Act.~~ Act;

(3) Federal and other reimbursements of expenditures paid from State funds shall be paid immediately to the source of the State ~~funds.~~ funds;

(4) Billings to the State for goods received or services rendered shall be paid neither early nor late but on the discount date or the due date to the extent practicable; and

(5) Disbursement cycles for each agency shall be established to the extent practicable so that the overall efficiency of the warrant disbursement system is maximized while maintaining prompt payment of bills due.

(g) The interest earnings of the General Fund and Highway Fund shall be maximized to the extent practicable. To this end:

(1) Interest earnings shall not be allocated to an account by the State Treasurer unless all of the moneys in the account are expressly eligible by law for receiving interest allocations;

(2) State officers and employees who received moneys in trust or for investment shall be solely responsible for properly segregating such funds for investment in the manner prescribed by law. The officer or employee charged with the responsibility for these moneys shall be under a duty to segregate the funds in a timely manner. No investment income shall be allocated by the State Treasurer to trust or other investment accounts until properly segregated into investment accounts as provided by law and the rules of the State Treasurer.

(h) The statewide cash management plan shall consider new technologies and procedures whenever the technologies and procedures are economically beneficial to the State as a whole. Where the new technologies and procedures may be implemented without additional legislation, the technologies and procedures shall be implemented in the plan.

(i) A willful or continued failure of an employee paid from State funds or employed by a State agency to follow ~~this cash management policy and~~ the statewide cash management plan ~~adopted by the Director of the Budget~~ is sufficient cause for immediate dismissal of the employee."

Sec. 16. G. S. 147-69.2 is amended by inserting the following subsection:

"(b1) With respect to investments authorized by subsection (b)(8), the State Treasurer shall appoint an Equity Investment Advisory Committee, which shall consist of five members: the State Treasurer, who shall be chairman ex officio; two members selected from among the members of the boards of trustees of the Retirement Systems; and two members selected from the general public. The State Treasurer shall also appoint a Secretary of the Equity Investment Advisory Committee who need not be a member of the committee. Members of the committee shall receive for their services the same per diem and allowances granted to members of the State boards and commissions generally. The committee shall have advisory powers only and membership shall not be deemed a public office within the meaning of Article VI, Section 9 of the Constitution of North Carolina or G.S. 128-1.1."

Sec. 17. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 473 **CHAPTER 543**

AN ACT TO REPEAL G.S. 47-8, TO PROTECT THE EFFICACY OF CERTAIN JUDGMENTS ENTERED IN RELIANCE UPON DOCUMENTS NOTARIZED BY ATTORNEYS AND TO VALIDATE CERTAIN ACTS OF NOTARIES PUBLIC.

The General Assembly of North Carolina enacts:

Section 1. G.S. 47-8 is repealed.

Sec. 2. Article 1 of Chapter 47 of the General Statutes is amended by adding a new section to read:

"*§ 47-8.1. Certain documents verified by attorneys validated.*

Final judgments otherwise proper, entered in actions or proceedings in which the complaints or any other documents were verified in violation of G.S. 47-8 prior to its repeal shall not be void or voidable."

Sec. 3. Chapter 10 of the General Statutes is amended by adding a new section to read:

"*§ 10-18. Acts of notaries concerning certain deeds of trust validated.*

All deeds of trust recorded prior to January 1, 1991, in which the notary public was named in the document as a trustee only are hereby validated."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 771 **CHAPTER 544**

AN ACT TO AMEND THE LAW REGARDING MENTAL HEALTH CLIENTS' RECORDS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 122C-55 is amended by adding the following new subsections to read:

"(j) Upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin or other family member or the designee with notification of the client's diagnosis, the prognosis, the medications prescribed, the dosage of the medications prescribed, the side effects of the medications prescribed, if any, and

the progress of the client, provided that the client or his legally responsible person has consented in writing, or the client has consented orally in the presence of a witness selected by the client, prior to the release of this information. Both the client's or the legally responsible person's consent and the release of this information shall be documented in the client's medical record. This consent shall be valid for a specified length of time only and is subject to revocation by the consenting individual.

(k) Notwithstanding the provisions of G.S. 122C-53(b) or G.S. 122C-206, upon request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client or his legally responsible person, the responsible professional shall provide the next of kin, or family member, or the designee, notification of the client's admission to the facility, transfer to another facility, decision to leave the facility against medical advice, discharge from the facility, and referrals and appointment information for treatment after discharge, after notification to the client that this information has been requested.

(l) In response to a written request of the next of kin or other family member who has a legitimate role in the therapeutic services offered, or other person designated by the client, for additional information not provided for in subsections (j) and (k) of this section, and when such written request identifies the intended use for this information, the responsible professional shall, in a timely manner:

(1) Provide the information requested based upon the responsible professional's determination that providing this information will be to the client's therapeutic benefit, and provided that the client or his legally responsible person has consented in writing to the release of the information requested; or

(2) Refuse to provide the information requested based upon the responsible professional's determination that providing this information will be detrimental to the therapeutic relationship between client and professional; or

(3) Refuse to provide the information requested based upon the responsible professional's determination that the next of kin or family member or designee does not have a legitimate need for the information requested.

(m) The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules specifically to define the legitimate role referred to in subsections (j), (k), and (l) of this section."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 809 **CHAPTER 545**

AN ACT TO PROVIDE THAT FISHERIES LICENSES BE ISSUED ON A FISCAL YEAR BASIS, INCREASE THE FEE FOR A LICENSE, AND PROVIDE THAT LICENSE AGENTS BE BONDED.

The General Assembly of North Carolina enacts:

Section 1. G.S. 113-152 reads as rewritten:

"*§ 113-152. Licensing of vessels, equipment and operations; fees.*

(a) The following vessels are subject to the licensing requirements of this section:

(1) All vessels engaged in commercial fishing operations in coastal fishing waters;

(2) All North Carolina vessels engaged in commercial fishing operations without the State which result in landing and selling fish in North Carolina. North Carolina vessels are those which have their primary situs in North Carolina. Motorboats with North Carolina numbers under the provisions of Chapter 75A of the General Statutes are deemed to have their primary situs in North Carolina: documented vessels which list a North Carolina port as home port are deemed to have their primary situs in North Carolina; and

(3) All nonresident vessels engaged in commercial fishing operations within the State or engaged in commercial fishing operations without the State that result in landing and selling fish in North Carolina.

'Commercial fishing operations' are all operations preparatory to, during, and subsequent to the taking of fish:

(1) With the use of commercial fishing equipment; or

(2) By any means, if a primary purpose of the taking is to sell the fish.

Commercial fishing operations also includes taking people fishing for hire.

It is unlawful for the owner of a vessel subject to licensing requirements to permit it to engage in commercial fishing operations without having first procured the appropriate licenses including vessel, gear, or other license required by the Commission. It is unlawful for anyone to command such a vessel engaged in commercial fishing operations without complying with the provisions of this section and of rules made under the authority of this Article. It is unlawful for

anyone to command such a vessel engaged in commercial fishing operations that does not meet the license requirements of this Article or of rules made under the authority of the Article, or without making reasonably certain that all persons on board are in compliance with the provisions of this Article and rules made under the authority of this Article. It is unlawful to participate in any commercial fishing operation in connection with which there is a vessel subject to licensing requirements not meeting the licensing requirements under the provisions of this Article or of rules made under the authority of this Article.

Nothing in this section shall require the licensing of any vessel used solely for oystering, scalloping, or clamming by a person not required to have an oyster, scallop, and clam license under the provisions of G.S. 113-154. Spears or gigs shall not be deemed commercial fishing equipment unless used in an operation the purpose of which is the taking of fish for commercial purposes.

(b) Any license that may be required by this section is to be issued in the name of the owner of the vessel. It is unlawful for the individual or corporate owner of a licensed vessel or any persons with the authority to authorize the use of a licensed vessel to permit any individual who is not eligible to have the license issued to him in his own right to command such licensed vessel for the purpose of engaging in commercial fishing operations. It is unlawful for such an ineligible person to command a licensed vessel for such purposes. The license application for a menhaden vessel must state the name of the person in command of the vessel. Upon change in command of a menhaden vessel, the owner must notify the Secretary within 30 days. Upon change in ownership of any licensed vessel, the new owner must notify the Secretary within 30 days. The Marine Fisheries Commission may provide by rule for the replacement of lost, obliterated, destroyed, or otherwise illegible license plates or decals upon tender of the original license receipt or upon other evidence that the Marine Fisheries Commission deems sufficient. The Department may charge a fee of fifty cents (50¢) for replacement of a plate or decal.

(c) Licenses are issued ~~annually~~ upon a ~~calendar-year~~ fiscal year basis for vessels of various lengths (length measured straight through the cabin and along the deck, from end to end, excluding the sheer) and types as follows for the fees indicated:

(1) Vessels, without motors, regardless of length when used in connection with other licensed vessels, no license required.

(2) Vessels with or without motors not over 18 feet in length, one dollar ($1.00) per foot.

(3) Vessels with or without motors over 18 feet but not over 38 feet in length, one dollar and fifty cents ($1.50) per foot.

(4) Vessels with or without motors over 38 feet in length, three dollars ($3.00) per foot.

(4a) Vessels owned by persons who are not residents of North Carolina, two hundred dollars ($200.00) or an amount equal to the nonresident fee charged by the nonresident's state, whichever is greater, in addition to the fee requirement otherwise applicable under this subsection or subsection (d).

(5) Vessels engaged in menhaden fishing shall be taxed, based on tonnage, as prescribed in subsection (d).

(6) Vessels engaged in commercial fishing operations for which the Commission requires a gear or equipment license shall be subject to fees as prescribed in subsection (g).

~~Length is measured from end to end over the deck excluding sheer.~~

(d) Vessels engaging in menhaden fishing are subject to the following license and fee requirements:

(1) For the mother ship, two dollars ($2.00) per ton, gross tonnage, customhouse measurements.

(2) For each purse boat carrying a purse seine used in connection with a licensed mother ship, no license required.

(3) Repealed by Session Laws 1983, c. 570, s. 6, effective January 1, 1984.

(e) All licenses in this Article issued during the period January 1, 1992, through June 30, 1992, are subject to fifty percent (50%) of the full license fee regardless of when issued and expire on June 30, 1992. ~~Unless otherwise indicated,~~ Beginning July 1, 1992, all licenses in this Article expire on ~~December 31~~ June 30 of each year and are subject to the full license fee regardless of when ~~issued.~~ issued unless otherwise indicated. ~~Unless a nonresident vessel is eligible for a land and sell license pursuant to G.S. 113-153, nonresident licenses may not be obtained from license agents and shall be obtained from the Morehead City offices of Marine Fisheries. Applications, including license fees, must be submitted by nonresidents and received by the Division at least 45 days prior to issuance of a license during which period it shall be ascertained whether the applicant would be denied a license under the standards in G.S. 113-166.~~

Nonresidents obtaining licenses must certify that their conviction record in their state of residence is such that they would not be denied a license under the standards in G.S. 113-166. When a license

application is denied for violations of fisheries laws, whether the violations occurred in North Carolina or another jurisdiction, the license fees shall not be refunded and shall be applied to the costs of processing the application.

(f) No person exempt from the oyster, scallop, and clam license under the provisions of this Article may take more than:

(1) One bushel of oysters per person per day, not to exceed two bushels per vessel per day;

(2) One-half bushel of scallops per person per day, not to exceed one bushel per vessel; and

(3) One hundred clams per person per day, not to exceed two hundred per vessel per day.

(g) Gear or equipment licenses shall be issued upon the payment of fees as prescribed by the Commission in its duly adopted rules at a rate to be established by the Commission between twenty-five dollars ($25.00) and five hundred dollars ($500.00) per license. The fee rate for gear or equipment licenses, at a minimum, shall be adequate to compensate the Department for the actual and administrative cost associated with the conservation and management of the fishery. Gear or equipment licenses may be required for commercial fishing operations that do not involve the use of a vessel."

Sec. 2. G.S. 113-154(c) reads as rewritten:

"(c) Oyster, scallop, and clam licenses are issued ~~annually on a calendar-year~~ on a fiscal year basis upon payment of a fee of four dollars ($4.00) upon proof that the license applicant is a resident of North Carolina: Provided, that persons under 16 years of age are exempt from the license requirements of this section if they are accompanied by their parent or guardian who is in compliance with the requirements of this section or if they have in their possession their parent's or guardian's oyster, scallop, and clam license."

Sec. 3. G.S. 113-156(d) reads as rewritten:

"(d) Every fish dealer subject to the licensing provisions of this section must secure a separate license or set of licenses for each established location. Where a dealer does not have an established location for transacting the fisheries business within the State, the license application must be denied unless the applicant satisfies the Secretary that his residence, or some other office or address, within the State, is a suitable substitute for an established location and that records kept in connection with licensing, sale, and tax requirements will be available for inspection when necessary. Fish dealers' licenses are issued on a ~~calendar-year~~ fiscal year basis upon payment of a fee as set forth herein upon proof, satisfactory to the Secretary, that the license applicant is a resident of North Carolina."

Sec. 4. G.S. 113-167(a) reads as rewritten:

"(a) License. -- Before an aircraft is used as a spotter plane in a commercial fishing operation, the owner of the aircraft must obtain a license for the aircraft from the Marine Fisheries Commission. A 'spotter plane' is an aircraft used for aerial identification of the location of fish in coastal waters so that a vessel may be directed to the fish. A license for a spotter plane to be used in a commercial fishing operation ~~must be renewed annually on or before January 1 of each year.~~ is issued on a fiscal year basis upon payment of a fee of one hundred dollars ($100.00). ~~The fee for an initial license for a spotter plane or the renewal of a license is one hundred dollars ($100.00).~~

In an application for a license for a spotter plane, the applicant must identify, either by boat or by company, the specific commercial fishing operations in which the spotter plane will be used during the license year. A license application may be amended during a license year to add a commercial fishing operation not identified in the license application."

Sec. 5. G.S. 113-151.1 reads as rewritten:

"§ *113-151.1. License agents.*

(a) The Secretary shall commission such persons as in his discretion he deems necessary to be license agents for the Department; provided, that at least one such license agent shall be appointed in each county which contains or borders on coastal fishing waters. Such agents together with the Department shall have the authority and duty to sell all licenses provided for by this Article. The Secretary may require license agents to post bonds and enter into contracts for keeping records, making reports concerning licenses and receipts, and be subject to necessary audits and inspections. Upon any violation by a license agent of the requirements of this section or any contract entered into under the terms of this section, the Secretary may initiate proceedings for the forfeiture of the license agent's bond and may summarily suspend, revoke, or refuse to renew a person's commission as a license agent pursuant to G.S. 150B-3, and impound or require the return of all licenses, moneys, record books, reports, license forms and other documents, ledgers, and materials pertinent or apparently pertinent to the license agency. The Secretary shall report evidence or misuse of State property, including license fees, by a license agent to the State Bureau of Investigation as provided by G.S. 114-15.1.

(b) License agents shall be compensated by ~~retaining fifty cents (50¢) from~~ adding a surcharge of one dollar ($1.00) to each license ~~sold.~~ sold and retaining the one dollar ($1.00) surcharge. If more than one license is listed on a consolidated license form, the license agent shall be compensated as if a single license were sold. ~~sold and he shall retain fifty cents (50¢).~~ It is unlawful for a license agent to

add more than the surcharge authorized by this section to the fee for each license sold."

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 22 **CHAPTER 546**

AN ACT TO REGULATE REVERSE MORTGAGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 53 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 21.

"Reverse Mortgages.

"§ *53-255. Title.*

This Article shall be known and may be cited as the Reverse Mortgage Act.

"§ *53-256. Purpose.*

It is the intent of the General Assembly that reverse mortgage loans be available so that elderly homeowners may use the equity in their homes to meet their financial needs. The General Assembly recognizes that there may be restrictions and requirements governing traditional mortgage transactions that should not apply to reverse mortgages. The purpose of this Article is to authorize reverse mortgage transactions and to clarify other provisions of North Carolina law that might otherwise apply to reverse mortgage loans, and to provide protection for elderly homeowners who enter into reverse mortgage transactions.

"§ *53-257. Definitions.*

The following definitions apply in this Article:

(1) Authorized lender or lender. The North Carolina Housing Finance Agency, any lender authorized to engage in business as a bank, savings institution, or credit union under the laws of this State or of the United States, or any other person, firm, or corporation authorized to make reverse mortgage loans by the Commissioner of Banks.

(2) Borrower. A natural person 62 years of age or older who occupies and owns, in fee simple individually, or with another borrower as tenants by the entireties or as joint tenants with right of survivorship, an interest in residential real property securing a reverse mortgage loan, and who borrows money under a reverse mortgage loan.

(3) Commissioner. The Commissioner of Banks of this State.

(4) Counselor. An individual who has completed a training curriculum on reverse mortgage counseling provided or approved by the North Carolina Housing Finance Agency and whose name is maintained on the Commissioner's list of approved reverse mortgage counselors.

(5) Outstanding balance. The current net amount of money owed by the borrower to the lender, calculated in accordance with G.S. 53-262(b), whether or not the sum is suspended under the terms of the reverse mortgage loan agreement or is immediately due and payable.

(6) Reverse mortgage loan or loan. A loan for a definite or indefinite term (i) secured by a first mortgage or first deed of trust on the principal residence of the mortgagor, (ii) the proceeds of which are disbursed to the mortgagor in one or more lump sums, or in equal or unequal installments, either directly by the lender or the lender's agent, and (iii) that requires no repayment until a future time, upon the earliest occurrence of one or more events specified in the reverse mortgage loan contract.

(7) Shared appreciation. An agreement by the lender and the borrower that, in addition to any interest accruing on the outstanding balance of a reverse mortgage loan, the lender may collect an additional amount equal to a percentage of any net appreciated value of the property during the term of the reverse mortgage loan.

(8) Total annual percentage rate. The annual average rate of interest, which provides the total amount owed at loan maturity when this rate is applied to the loan advances, excluding closing costs not paid to third parties, over the term of the reverse mortgage loan.

"*§ 53-258. Authority and procedures governing reverse mortgage loans.*

(a) No person, firm, or corporation shall engage in the business of making reverse mortgage loans without first being approved as an authorized lender by the Commissioner, unless the lender is the North Carolina Housing Finance Agency, or is a bank, savings institution, or credit union authorized to do business under the laws of this State or authorized to do business under the laws of the United States and chartered to do business in this State.

(b) An application for authorization to make reverse mortgage loans shall be in writing to the Commissioner and in the form prescribed by the Commissioner. The application shall contain the name and complete business address or addresses of the applicant. The application shall also include affirmation of financial solvency and all capitalization requirements that are required by the Commissioner.

The application shall be accompanied by a nonrefundable fee, payable to the Commissioner, of five hundred dollars ($500.00).

(c) The North Carolina Housing Finance Agency, and any bank, savings institution, or credit union that is not required to obtain authorization to make reverse mortgage loans under subsection (a) of this section, shall, prior to making any reverse mortgage loan, notify the Commissioner of its intent to make reverse mortgage loans. This notification shall be made on a form prescribed by the Commissioner and shall contain all information required by the Commissioner.

(d) The Commissioner shall, upon determination that a lender should be authorized to make reverse mortgage loans, issue notice of this authority to the lender. The authority to issue reverse mortgage loans is valid for the period of time specified by the Commissioner. A lender to whom a notice of authority is issued shall display the notice prominently in any and all offices of the lender that make reverse mortgage loans. Authorizations issued under this section are nontransferable and subject to an annual fee of two hundred fifty dollars ($250.00).

"*§ 53-259. Application of rules.*

In addition to the provisions of this Article, authorized lenders shall comply with rules adopted by the Commissioner that are reasonable and necessary to effectuate the purposes of this Article and to protect the public interest. Provided, however, that provisions in Chapters 24 or 45 of the General Statutes and the rules adopted under those Chapters that conflict with this Article shall not apply to reverse mortgage transactions governed by this Article.

"*§ 53-260. Interest.*

Notwithstanding any other provisions of law to the contrary, the parties to a reverse mortgage loan may contract for the payment of interest at a rate agreed to by the parties. Interest shall be deferred until the earliest occurrence of one or more events specified in the reverse mortgage loan contract. Payment of interest on deferred interest shall be as agreed upon by the parties to the contract. The parties may agree that the deferred interest may be added to the outstanding balance of the loan. The Commissioner may determine that the total annual percentage rate is excessive. If the Commissioner determines the total annual percentage rate to be excessive, that determination shall be included in the information provided to counselors under G.S. 53-264(a)(7), and to applicants for reverse mortgage loans under G.S. 53-264(b).

"*§ 53-261. Taxes, insurance, and assessments.*

A reverse mortgage loan contract may provide that it is the primary obligation of the borrower to pay all property taxes, insurance premiums, and assessments in a timely manner, and that the failure of

the borrower to make these payments and to provide evidence of payment to the lender may constitute grounds for default of the loan. A reverse mortgage loan contract shall state that if a borrower fails to pay property taxes, insurance premiums, or assessments, the lender may choose, at the lender's option, to pay the amounts due, charge them to the reverse mortgage loan, and recalculate regularly scheduled payments under the loan to account for the increased outstanding loan balance.

"*§ 53-262. Renegotiation of loan; calculation of outstanding balance; prepayment.*

(a) If a reverse mortgage loan contract allows for a change in the payments or payment options, the lender may charge a reasonable fee when payments are recalculated.

(b) The outstanding loan balance shall be calculated by adding the current totals of items described in subdivisions (1) through (4) below, and subtracting the current totals of all reverse mortgage loan payments made by the borrower to the lender:

(1) The sum of all disbursements made by the lender to the borrower, or to another party on the borrower's behalf.

(2) All taxes, assessments, insurance premiums, and other similar charges paid to date by the lender under G.S. 53-261 and not reimbursed by the borrower within 60 days of the date payment was made by the lender.

(3) All actual closing costs the borrower has deferred, if a deferral provision is contained in the loan agreement.

(4) The total accrued interest to date.

(c) Prepayment of the reverse mortgage loan, in whole or part, shall be permitted without penalty at any time during the term of the loan.

"*§ 53-263. Limits on borrowers' liability.*

(a) When a reverse mortgage loan becomes due, if the borrower mortgaged one hundred percent (100%) of the full value of the house then the amount owed by the borrower shall not be greater than (i) the fair market value of the house, minus sale costs, or (ii) the outstanding balance of the loan, whichever amount is less.

(b) If the borrower mortgaged less than one hundred percent (100%) of the full value of the house, the amount owed by the borrower shall not be greater than (i) the outstanding balance of the loan, or (ii) the percentage of the fair market value, minus sale costs, as provided in the contract, whichever amount is less.

(c) The lender shall enforce the debt only through the sale of the property and shall not obtain a deficiency judgment against the borrower.

"*§ 53-264. Disclosures of loan terms.*

(a) On forms prescribed by the Commissioner, all authorized lenders shall provide all of the following information to the Commissioner for dissemination to all counselors who provide counseling to prospective reverse mortgage borrowers:

(1) The borrower's rights, obligations, and remedies with respect to the borrower's temporary absence from the home, late payments by the lender, and payment default by the lender.

(2) Conditions or events that require the borrower to repay the loan obligation.

(3) The right of the borrower to mortgage less than the full value of the home, if permitted by the reverse mortgage loan contract.

(4) The projected total annual percentage rate applicable under various loan terms and appreciation rates and interest rates applicable at sample ages of borrowers.

(5) Standard closing costs.

(6) All service fees to be charged during the term of the loan.

(7) Other information required by the Commissioner.

(b) Within 10 business days after application is made by a borrower, but not less than 20 business days before closing of the loan, lenders shall provide applicants with the same information required in subsection (a) of this section, shall inform applicants that reverse mortgage counseling is required before the loan can be closed, and shall provide the names and addresses of counselors listed with the Commissioner's office.

"§ 53-265. *Information required of lender.*

(a) At the closing of the reverse mortgage loan, the lender shall provide to the borrower the name of the lender's employee or agent who has been designated specifically to respond to inquiries concerning reverse mortgage loans. This information shall be provided by the lender to the borrower at least annually, and whenever the information concerning the designated employee or agent changes.

(b) On an annual basis and when the loan becomes due, the lender shall issue to the borrower, without charge, a statement of account regarding the activity of the mortgage for the preceding calendar year, or for the period since the last statement of account was provided. The statement shall include all of the following information for the preceding year:

(1) The outstanding balance of the loan at the beginning of the statement period.

(2) Disbursements to the borrower.

(3) The total amount of interest added to the outstanding balance of the loan.

(4) Any property taxes, insurance premiums, or assessments paid by the lender.
(5) Payments made to the lender.
(6) The total mortgage balance owed to date.
(7) The remaining amount available to the borrower in reverse mortgage loans wherein proceeds have been reserved to be disbursed in one or more lump sum amounts.

"§ 53-266. *Effects of lender's default.*

(a) A lender's failure to make loan advances to the borrower under the reverse mortgage loan contract shall be deemed the lender's default of the contract. Upon the lender's default, the lender shall forfeit any right to collect interest or service charges under the contract. The lender's right to recovery at loan maturity shall be limited to the outstanding balance as of the date of default, minus all interest. Lenders may also be subject to other default penalties established by the Commissioner.

(b) Subsection (a) of this section shall not apply if the lender has previously declared the borrower in default under G.S. 53-267, or if the lender makes the required loan advance within the time stated in the mortgage contract or within 30 days of receipt of notice from the borrower that the loan advance was not received.

"§ 53-267. *Repayment upon borrower's default.*

A reverse mortgage loan contract may provide for a borrower's default, thereby triggering early repayment of the loan, based only upon one or more of the following terms and conditions:

(1) The borrower fails to maintain the residence as required by the contract.
(2) The borrower sells or otherwise conveys title to the home to a third party.
(3) The borrower dies and the home is not the principal residence of the surviving borrower.
(4) The home is not the principal residence of at least one of the borrowers for a period of 12 consecutive months for reasons of physical or mental illness.
(5) For reasons other than physical or mental illness, the home ceases to be the principal residence of the borrower for a period of 180 consecutive days and is not the principal residence of another borrower under the loan, without prior written permission from the lender.
(6) The borrower fails to pay property taxes, insurance premiums, and assessments under G.S. 53-261.

"§ 53-268. *Time for initiation of foreclosure.*

When a borrower's obligation to repay the reverse mortgage loan is triggered under G.S. 53-267, in addition to all rights conferred upon

owners and borrowers under Chapter 45 of the General Statutes, the lender must give the borrower not less than 90 days' notice of its intent to initiate foreclosure proceedings. If the contract so provides, interest will continue to accrue during the 90-day period.

"§ 53-269. *Counseling provisions.*

(a) The North Carolina Housing Finance Agency shall adopt rules governing the training of counselors and necessary standards for counselor training and shall establish reasonable fees for training. The North Carolina Housing Finance Agency shall forward the names of all persons satisfying counselor training requirements to the Commissioner.

(b) The Commissioner shall maintain a list of counselors who have satisfied training requirements and shall periodically provide an up-to-date copy of the list to all authorized lenders.

(c) The Commissioner shall provide to all counselors who have satisfied training requirements information provided to the Commissioner by authorized lenders under G.S. 53-265.

"§ 53-270. *Prohibited acts.*

Reverse mortgage lenders are prohibited from engaging in any of the following acts in connection with the making, servicing, or collecting of a reverse mortgage loan:

(1) Misrepresenting material facts, making false promises, or engaging in a course of misrepresentation through agents or otherwise.

(2) Failing to disburse funds in accordance with the terms of the reverse mortgage loan contract or other written commitment.

(3) Improperly refusing to issue a satisfaction of a mortgage.

(4) Engaging in any action or practice that is unfair or deceptive, or that operates a fraud on any person.

(5) Contracting for or receiving shared appreciation.

(6) Closing a reverse mortgage loan without receiving certification from a counselor that the borrower has received counseling on the advisability of a reverse mortgage loan and the appropriate reverse mortgage loan for the borrower.

(7) Failing to comply with this Article.

"§ 53-271. *Commissioner's authority to enforce; penalties.*

(a) The Commissioner shall adopt rules necessary to implement and enforce the provisions of this Article. Upon finding probable cause to believe that an authorized lender is in violation of this Article, or of any law or any rule or regulation of this State, the United States, or an agency of the State or the United States, the Commissioner shall, after affording reasonable notice and opportunity to be heard to the lender, order the lender to cease and desist from the violation.

(b) If a lender fails to comply with or appeal the Commissioner's cease and desist order, the lender shall be subject to a civil penalty of one thousand dollars ($1,000) for each violation that is the subject of the cease and desist order. The penalty imposed under this section shall be in addition to and not in lieu of penalties available under any other provision of law applicable to a reverse mortgage lender.

(c) Upon a finding that a reverse mortgage lender has violated this Article, the Commissioner may revoke, temporarily or permanently, the authority of the lender to make reverse mortgage loans.

(d) A person damaged by a lender's actions may file an action in civil court to recover actual and punitive damages. Attorneys' fees shall be awarded to a prevailing borrower. Nothing in this Article shall limit any statutory or common law right of a person to bring an action in court for any act, nor shall this Article limit the right of the State to punish a person for the violation of any law.

"§ *53-272. Appeals.*

Notwithstanding any other provision of law, an aggrieved party may, within 30 days after final decision of the Commissioner, and by written notice to the Commissioner, appeal directly to the North Carolina Court of Appeals for judicial review of the record. In the event of an appeal the Commissioner shall certify the record to the Clerk of the Court of Appeals no later than 30 days after receipt of the notice of appeal. The record shall include all memoranda, briefs, and any other documents, data, information, or evidence submitted by any party to the proceeding. All factual information contained in a report of examination or investigation submitted to or otherwise obtained by the Commissioner or the Commissioner's staff shall be made a part of the record unless the information is deemed confidential by the Commissioner."

Sec. 2. G.S. 7A-29 reads as rewritten:

"§ *7A-29. Appeals of right from certain administrative agencies.*

(a) From any final order or decision of the North Carolina Utilities Commission not governed by subsection (b), the Department of Human Resources ~~pursuant to~~ under G.S. 131E-188(b), the Commissioner of Banks ~~pursuant to~~ under Articles ~~17 and 18~~ 17, 18, and 21 of Chapter 53 of the General Statutes, the Administrator of Savings and Loans ~~pursuant to~~ under Article 3A of Chapter 54B of the General Statutes, the North Carolina Industrial Commission, the North Carolina State Bar ~~pursuant to~~ under G.S. 84-28, the Property Tax Commission ~~pursuant to~~ under G.S. 105-290 and 105-342, ~~the Board of State Contract Appeals pursuant to G.S. 143-135.9,~~ or an appeal from the Commissioner of Insurance ~~pursuant to~~ under G.S. 58-9.4, or from the Governor's Waste Management Board ~~pursuant to~~

under G.S. 130A-293 and G.S. 104E-6.2, appeal as of right lies directly to the Court of Appeals.

(b) From any final order or decision of the Utilities Commission in a general rate case, appeal as of right lies directly to the Supreme Court."

Sec. 3. This act becomes effective October 1, 1991. This act expires October 1, 1995. No reverse mortgage loan may be made on or after the date the act expires. The expiration of the act does not affect the validity of a reverse mortgage loan made before the date of expiration.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 37 **CHAPTER 547**

AN ACT TO ESTABLISH A HOMEOWNERS RECOVERY FUND UNDER THE SUPERVISION OF THE GENERAL CONTRACTORS LICENSING BOARD.

The General Assembly of North Carolina enacts:

Section 1. Chapter 87 of the General Statutes is amended by adding the following new Article to read:

"ARTICLE 1A.

"Homeowners Recovery Fund.

"*§ 87-15.5. Definitions.*

The following definitions apply in this Article:

(1) Applicant. -- The owner or former owner of a single-family residential dwelling unit who has suffered a reimbursable loss and has filed an application for reimbursement from the Fund.

(2) Board. -- The State Licensing Board for General Contractors.

(3) Dishonest conduct. -- Fraud or deceit in either of the following:

a. Obtaining a license under Article 1 of Chapter 87 of the General Statutes.

b. The practice of general contracting by a general contractor.

(4) Fund. -- The Homeowners Recovery Fund.

(5) General contractor. -- A person or other entity who meets any of the following descriptions:

a. Is licensed under Article 1 of Chapter 87 of the General Statutes.

b. Fraudulently procures any building permit by presenting the license certificate of a general contractor.

c. Fraudulently procures any building permit by falsely impersonating a licensed general contractor.

(6) Reimbursable loss. -- A monetary loss that meets all of the following requirements:

a. Results from dishonest or incompetent conduct by a general contractor in constructing or altering a single-family residential dwelling unit.

b. Is not paid, in whole or in part, by or on behalf of the general contractor whose conduct caused the loss.

c. Is not covered by a bond, a surety agreement, or an insurance contract.

(7) Single-family residential dwelling unit. -- A separately owned residence for use of one or more persons as a housekeeping unit with space for eating, living, and permanent provisions for cooking and sanitation, whether or not attached to other such residences.

"§ 87-15.6. *Homeowners Recovery Fund.*

(a) The Homeowners Recovery Fund is established as a special account of the Board. The Board shall administer the Fund. The purpose of the Fund is to reimburse homeowners who have suffered a reimbursable loss in constructing or altering a single-family residential dwelling unit.

(b) Whenever a general contractor applies for the issuance of a permit for the construction of any single-family residential dwelling unit or for the alteration of an existing single-family residential dwelling unit, a city or county building inspector shall collect from the general contractor a fee in the amount of five dollars ($5.00) for each dwelling unit to be constructed or altered under the permit. The city or county inspector shall forward four dollars ($4.00) of each fee collected to the Board on a quarterly basis and the city or county may retain one dollar ($1.00) of each fee collected. The Board shall deposit the fees received into the Fund. The Board may accept donations and appropriations to the Fund. G.S. 87-7 shall not apply to the Fund.

The Board may suspend collection of this fee for any year upon a determination that the amount in the Fund is sufficient to meet likely disbursements from the Fund for that year. The Board shall notify city and county building inspectors when it suspends collection of the fee.

(c) The Board may adopt rules to implement this Article.

"§ 87-15.7. *Fund administration.*

(a) The Board shall determine the procedure for applying to the Board for reimbursement from the Fund, for processing applications, for granting requests for reimbursement, and for the subrogation or assignment of the rights of any reimbursed applicant. The Board shall submit annually a report to the State Treasurer accounting for all monies credited to and expended from the Fund.

(b) The Board may use monies in the Fund only for the following purposes:

(1) To reimburse an applicant's reimbursable loss after approval by the Board.

(2) To purchase insurance to cover reimbursable losses when the Board finds it appropriate to do so.

(3) To invest amounts in the Fund that are not currently needed to reimburse losses and maintain adequate reserves in the manner in which State law allows fiduciaries to invest funds.

(4) To pay the expenses of the Board to administer the Fund, including employment of counsel to prosecute subrogation claims.

"*§ 87-15.8. Application for reimbursement.*

(a) The Board shall prepare a form to be used to apply for reimbursement from the Fund. Only a person whom the Board determines to meet all of the following requirements may be reimbursed from the Fund:

(1) Has suffered a reimbursable loss in the construction or alteration of a single-family residential dwelling unit owned or previously owned by that person.

(2) Did not, directly or indirectly, obtain the building permit in the person's own name or did use a general contractor.

(3) Has exhausted all civil remedies against the general contractor whose conduct caused the loss and, if applicable, the general contractor's estate, and has obtained a judgment against the general contractor that remains unsatisfied. This requirement is waived if the person is prevented from filing suit or obtaining a judgment against the contractor due to the automatic stay provision of section 362 of the U.S. Bankruptcy Code.

(4) Has complied with the applicable rules of the Board.

(b) The Board shall investigate all applications for reimbursement and may reject or allow part or all of a claim based on the amount of money in the Fund. The Board shall have complete discretion to determine the order, amount, and manner of payment of approved applications. All payments are a matter of privilege and not of right and no person has a right to reimbursement from the Fund as a third

party beneficiary or otherwise. No attorney shall be compensated by the Board for prosecuting an application before it.

"*§ 87-15.9. Subrogation for reimbursement made.*

The Board is subrogated to an applicant who is reimbursed from the Fund in the amount reimbursed and may bring an action against the general contractor whose conduct caused the reimbursable loss, the general contractor's assets, or the general contractor's estate. The Board may enforce any claims it may have for restitution or otherwise, and may employ and compensate consultants, agents, legal counsel, and others it finds necessary and appropriate to carry out its authority under this section."

Sec. 2. This act becomes effective October 1, 1991, and applies to reimbursable losses caused by the dishonest or incompetent conduct of a general contractor that occurs on or after that date.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 183 **CHAPTER 548**

AN ACT TO REQUIRE THE DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES TO CONDUCT VARIOUS HEALTH-RELATED PROJECTS.

The General Assembly of North Carolina enacts:

Section 1. (a) The Department of Environment, Health, and Natural Resources shall do the following to improve the State public health system:

(1) Develop and conduct activities designed to expand the Department's capability and the capability of local health departments or districts to secure private sector financial resources to supplement public health activities and services mandated by the State.

(2) Develop a plan for the establishment of a statewide system for assessing health status and health needs in every county. In determining community health status and needs, the Department shall solicit and consider input from private providers, community groups and agencies, the general public, and policy makers.

(3) Plan for the development and implementation of a computerized statewide data collection and retrieval system that will permit comparisons of health data and indices, and that will enable local health departments to have access to data collected. In developing the plan the Department shall consider recommendations in the 1989-90 Public Health

Study Commission's final report pertaining to standardization, adaptability, and costs of integrating local data collection systems with the State system.

(4) Implement a monitoring and evaluation program to measure local health department progress in applying health outcome standards and achieving health outcome objectives established by the Commission for Health Services under G.S. 130A-29(c)(7). The Department shall conduct monitoring and evaluation on a regularly scheduled basis, and shall provide assistance to local health departments that are having difficulty meeting objectives.

(b) The Department of Environment, Health, and Natural Resources shall report to the North Carolina Public Health Study Commission, if the Commission is established by the General Assembly, on the status of each project in subsection (a) of this section. The Department shall report to the Commission at the Commission's request. If the General Assembly does not establish the North Carolina Study Commission on Public Health, then the Department shall report the status of the project activity required under subsection (a) to the Joint Legislative Commission on Governmental Operations in March, 1992.

Sec. 2. G.S. 130A-29 reads as rewritten:

"*§ 130A-29. Commission for Health Services -- creation, powers and duties.*

(a) The Commission for Health Services is created with the authority and duty to adopt rules to protect and promote the public health.

(b) The Commission is authorized to adopt rules necessary to implement the public health programs administered by the Department as provided in this Chapter.

(c) The Commission shall adopt rules:

(1) Repealed by Session Laws 1983 (Regular Session, 1984), c. 1022, s. 5.

(2) Establishing standards for approving sewage-treatment devices and holding tanks for marine toilets as provided in G.S. 75A-6(o);

(3) Establishing specifications for sanitary privies for schools where water-carried sewage facilities are unavailable as provided in G.S. 115C-522;

(4) Establishing requirements for the sanitation of local confinement facilities as provided in Part 2 of Article 10 of Chapter 153A of the General Statutes; ~~and~~

(5) Repealed by Session Laws 1989 (Regular Session, 1990), c. 1075, s. 1, effective July 28, 1990.

(6) Requiring proper treatment and disposal of sewage and other waste from chemical and portable ~~toilets.~~ toilets; and

(7) Establishing statewide health outcome objectives and delivery standards.

(d) The Commission is authorized to create:

(1) Metropolitan water districts as provided in G.S. 162A-33;

(2) Sanitary districts as provided in Part 2 of Article 2 of this Chapter; and

(3) Mosquito control districts as provided in Part 2 of Article 12 of this Chapter.

(e) Rules adopted by the Commission for Health Services shall be enforced by the Department of Environment, Health, and Natural Resources."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 307 **CHAPTER 549**

AN ACT TO AMEND THE LAW REGARDING SCHOLARSHIPS FOR CHILDREN OF WAR VETERANS TO INCLUDE CHILDREN OF PERSIAN GULF VETERANS AND TO MAKE TECHNICAL CHANGES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 165-20 reads as rewritten:

"§ *165-20. Definitions.*

As used in this Article the terms defined in this section shall have the following meaning:

(1) 'Active federal service' means full-time duty in the armed forces other than active duty for training; however, if disability or death occurs while on active duty for training (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, such active duty for training shall be considered as active federal service.

(2) 'Armed forces' means the army, navy, marine corps, air force and coast guard, including their reserve components.

(3) 'Child' means a person who has completed high school or its equivalent prior to receipt of a scholarship as may be awarded under this Article, who has complied with the requirements of the Selective Service System, if applicable, and who further meets one of the following requirements:

a. A person whose veteran parent was a legal resident of North Carolina at the time of said veteran's entrance into that period of service in the armed forces during which eligibility is established under G.S. 165-22.

b. A veteran's child who was born in North Carolina and has lived in North Carolina continuously since birth. Provided, that the requirement in the preceding sentence as to birth in North Carolina may be waived by the Department of Administration if it is shown to the satisfaction of the Department that the child's mother was a native-born resident of North Carolina and was such resident at the time of her marriage to the veteran and was outside the State temporarily at the time of the child's birth, following which the child was returned to North Carolina within a reasonable period of time where said child has since lived continuously.

c. A person meeting either of the requirements set forth in subdivision (3)a or b above, and who was legally adopted by the veteran prior to said person's reaching the age of 15 years.

(4) 'Period of war' and 'wartime' shall mean any of the periods or circumstances as defined below:

a. World War I, meaning (i) the period beginning on April 6, 1917 and ending on November 11, 1918, and (ii) in the case of a veteran who served with the United States armed forces in Russia, the period beginning on April 6, 1917 and ending on April 1, 1920.

b. World War II, meaning the period beginning on December 7, 1941 and ending on December 31, 1946.

c. Korean Conflict, meaning the period beginning on June 27, 1950 and ending on January 31, 1955.

d. Vietnam era, meaning the period beginning on August 5, 1964, and ending on May 7, 1975.

d1. Persian Gulf War, meaning the period beginning on August 2, 1990, and ending on the date prescribed by Presidential proclamation or concurrent resolution of the United States Congress.

e. Any period of service in the armed forces during which the veteran parent of an applicant for a scholarship under this Article suffered death or disability (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war.

(5) 'Private educational institution' means any junior college, senior college or university which is operated and governed by private interests not under the control of the federal, State or any local government, which is located within the State of North Carolina, which does not operate for profit, whose curriculum is primarily directed toward the awarding of associate, baccalaureate or graduate degrees, which agrees to the applicable administration and funding provisions of G.S. 165-22.1, of this Article, and which is otherwise approved by the State Board of Veterans Affairs.

(6) 'State educational institution' means any educational institution of higher learning which is owned and operated by the State of North Carolina, or any community college operated under the provisions of Chapter 115A and Article 3 of Chapter 116 of the General Statutes of North Carolina, or the college program of the North Carolina School of the Arts, or any technical institute operated under the provisions of Chapter 115A of the General Statutes of North Carolina.

(7) 'Veteran' means a person who served as a member of the armed forces of the United States in active federal service during a period of war and who was separated from the armed forces under conditions other than dishonorable. A person who was separated from the armed forces under conditions other than dishonorable and whose death or disability was incurred (i) as a direct result of armed conflict or (ii) while engaged in extra-hazardous service, including such service under conditions simulating war, shall also be deemed a 'veteran' and such death or disability shall be considered wartime service-connected."

Sec. 2. G.S. 165-22 reads as rewritten:

"*§ 165-22. Classes or categories of eligibility under which scholarships may be awarded.*

A child, as defined in this Article, who falls within the provisions of any eligibility class described below shall, upon proper application be considered for a scholarship, subject to the provisions and limitations set forth for the class under which he is considered:

(1) Class I-A: Under this class a scholarship shall be awarded to any child whose veteran parent

a. Was killed in action or died from wounds or other causes not due to his own wilful misconduct while a member of the armed forces during a period of war, or

b. Has died of service-connected injuries, wounds, illness or other causes incurred or aggravated during wartime service in the armed forces, as rated by the United States

~~Veterans Administration.~~ Department of Veterans Affairs.

(2) Class I-B: Under this class a limited scholarship providing only those benefits set forth in G.S. 165-21(1)a and d and 165-21(2) of this Article, shall be awarded to any child whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of, is or was at the time of his death receiving compensation for a wartime service-connected disability of one hundred percent (100%) as rated by the United States ~~Veterans Administration.~~ Department of Veterans Affairs. Provided, that if the veteran parent of a recipient under this class should die of his wartime service-connected condition before the recipient shall have utilized all of his scholarship eligibility time, then the North Carolina Department of Administration shall amend the recipient's award from Class I-B to Class I-A for the remainder of the recipient's eligibility time. The effective date of such an amended award shall be determined by the Department of Administration, but, in no event shall it predate the date of the veteran parent's death.

(3) Class II: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of his death receiving compensation for a wartime service-connected disability of twenty percent (20%) or more, but less than one hundred percent (100%), as rated by the United States ~~Veterans Administration.~~ Department of Veterans Affairs, or

b. Is or was at the time of his death receiving wartime compensation for a statutory award for arrested pulmonary tuberculosis, as rated by the United States ~~Veterans Administration.~~ Department of Veterans Affairs.

(4) Class III: Under this class a scholarship may be awarded to not more than 100 children yearly, each of whose veteran parent, at the time the benefits pursuant to this Article are sought to be availed of:

a. Is or was at the time of his death drawing pension for permanent and total disability, nonservice-connected, as rated by the United States ~~Veterans Administration,~~ Department of Veterans Affairs, or

b. Is deceased and who does not fall within the provisions of any other eligibility class described in G.S. 165-22(1),

(2), (3), (4)a., nor (5) provided such child is less than 23 years of age at the time of application for such scholarship.

(5) Class IV: Under this class a scholarship as defined in G.S. 165-21 shall be awarded to any child whose parent, while serving honorably as a member of the armed forces of the United States in active federal service during a period of war, as defined in G.S. 165-20(4), was listed by the United States government as (i) missing in action, (ii) captured in line of duty by a hostile force, or (iii) forcibly detained or interned in line of duty by a foreign government or power."

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 314 **CHAPTER 550**

AN ACT TO PROVIDE FOR THE IMPLEMENTATION OF PROGRAMS TO ADDRESS THE NURSING SHORTAGE IN NORTH CAROLINA.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-171.61(b) reads as rewritten:

"(b) The Nursing Scholars Program shall be used to provide the following:

(1) A four-year scholarship loan in the amount of five thousand dollars ($5,000) per year, per recipient, to North Carolina high school seniors or other persons interested in preparing to become a registered nurse through a baccalaureate degree program.

(2) A two-year scholarship loan in the amount of three thousand dollars ($3,000) per year, per recipient, to persons interested in preparing to be a registered nurse through an associate degree nursing program or a diploma nursing program.

(3) A two-year scholarship loan in the amount of three thousand dollars ($3,000) per year, per recipient, for two years of baccalaureate nursing study for college juniors or community college graduates interested in preparing to be a registered nurse.

(4) A two-year scholarship loan of three thousand dollars ($3,000) per year, per recipient, for two years of baccalaureate study in nursing for registered nurses who do not hold a baccalaureate degree in nursing.

(5) A two-year scholarship loan of six thousand dollars ($6,000) per year, per recipient, for two years of study leading to a master of science in nursing degree for people already holding a baccalaureate degree in nursing."

Sec. 1.1. G.S. 90-171.62(b) reads as rewritten:

"(b) The State Education Assistance Authority shall forgive the loan if, within seven years after graduation from a nursing education program, the recipient practices nursing in North Carolina for one year for every year a scholarship loan was provided. If the recipient repays the scholarship loan by cash payments, all indebtedness shall be repaid within ten years. The Authority may forgive the scholarship loan if it determines that it is impossible for the recipient to practice nursing in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within ten years following graduation or termination of enrollment in a nursing education program."

Sec. 1.2. G.S. 90-171.65(c) reads as rewritten:

"(c) The State Education Assistance Authority shall carry out the following functions in implementing the need-based nursing scholarship loan program:

(1) Promulgate the rules and regulations necessary to implement the scholarship program;
(2) Disburse, collect, and monitor scholarship loan funds;
(3) Establish the terms and conditions of promissory notes executed by loan recipients;
(4) Approve service repayment agreements; ~~and.~~
(5) Collect cash repayments required when service repayment is not ~~completed.~~ completed; and
(6) Adopt rules to allow for the forgiveness of scholarship loans if it determines that it is impossible for the recipient to practice nursing in North Carolina for a sufficient time to repay the loan because of the death or permanent disability of the recipient within ten years following graduation or termination of enrollment in a nursing education program."

Sec. 2. G.S. 116-37(d) reads as rewritten:

"(d) Personnel. -- The University of North Carolina Hospitals at Chapel Hill shall maintain a personnel office for personnel administration. Notwithstanding the provisions of Chapter 126 of the General Statutes to the contrary, the Board of Directors of the University of North Carolina Hospitals at Chapel Hill shall establish policies and rules governing the study and implementation of competitive position classification and compensation plans for registered and licensed practical nurse positions that have been approved by the Board of Directors. These plans shall provide for

minimum, maximum, and intermediate rates of pay, and may include provisions for range revisions and shift premium pay and for salary adjustments to address internal inequities, job performance, and market conditions. The Office of State Personnel shall review the classification and compensation plans on an annual basis. All changes in compensation plans for these registered and licensed practical nurse positions shall be submitted to the Office of State Personnel upon implementation."

Sec. 3. Chapter 90 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 9F.

"North Carolina Center for Nursing.

"*§ 90-171.70. North Carolina Center for Nursing; establishment; goals.*

There is established the North Carolina Center for Nursing to address issues of supply and demand for nursing, including issues of recruitment, retention, and utilization of nurse manpower resources. The General Assembly finds that the Center will repay the State's investment by providing an ongoing strategy for the allocation of the State's resources directed towards nursing. The primary goals for the Center shall be:

(1) To develop a strategic statewide plan for nursing manpower in North Carolina by:
   a. Establishing and maintaining a database on nursing supply and demand in North Carolina, to include (i) current supply and demand, and (ii) future projections; and
   b. Selecting priorities from the plan to be addressed.

(2) To convene various groups representative of nurses, other health care providers, business and industry, consumers, legislators, and educators to:
   a. Review and comment on data analysis prepared for the Center;
   b. Recommend systemic changes, including strategies for implementation of recommended changes; and
   c. To evaluate and report the results of these efforts to the General Assembly and others.

(3) To enhance and promote recognition, reward, and renewal activities for nurses in North Carolina by:
   a. Promoting continuation of Institutes for Nursing Excellence programs as piloted by the Area Health Education Centers in 1989-90 or similar options;
   b. Proposing and creating additional reward, recognition, and renewal activities for nurses; and

c. Promoting media and positive image-building efforts for nursing.

"§ 90-171.71. *North Carolina Center for Nursing; governing board.*

(a) The North Carolina Center for Nursing shall be governed by a policy-setting board of directors. The Board shall consist of 16 members, with a simple majority of the Board being nurses representative of various practice areas. Other members shall include representatives of other health care professions, business and industry, health care providers, and consumers. The Board shall be appointed as follows:

(1) Four members appointed by the General Assembly upon recommendation of the President Pro Tempore of the Senate, at least one of whom shall be a registered nurse and at least one other a representative of the hospital industry;

(2) Four members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives, at least one of whom shall be a registered nurse and at least one other a representative of the long-term care industry;

(3) Four members appointed by the Governor, two of whom shall be registered nurses; and

(4) Four nurse educators, one of whom shall be appointed by the Board of Governors of The University of North Carolina, one other by the State Board of Community Colleges, one other by the North Carolina Association of Independent Colleges and Universities, and one by the Area Health Education Centers Program.

(b) The initial terms of the members shall be as follows:

(1) Of the members appointed pursuant to subdivision (1) of subsection (a) of this section, two shall be appointed for terms expiring June 30, 1994, one for a term expiring June 30, 1993, and one for a term expiring June 30, 1992;

(2) Of the members appointed pursuant to subdivision (2) of subsection (a) of this section, one shall be appointed for a term expiring June 30, 1994, two for terms expiring June 30, 1993, and one for a term expiring June 30, 1992;

(3) Of the members appointed pursuant to subdivision (3) of subsection (a) of this section, one shall be appointed for a term expiring June 30, 1994, one for a term expiring June 30, 1993, and two for terms expiring June 30, 1992; and

(4) Of the members appointed pursuant to subdivision (4) of subsection (a) of this section, the terms of the members appointed by the Board of Governors of The University of North Carolina and the State Board of Community Colleges

shall expire June 30, 1994; the term of the member appointed by the North Carolina Association of Independent Colleges shall expire June 30, 1993; and the term of the member appointed by the Area Health Education Centers Program shall expire June 30, 1992.

After the initial appointments expire, the terms of all of the members shall be three years, with no member serving more than two consecutive terms.

(c) The Board of Directors shall have the following powers and duties:

(1) To employ the executive director;

(2) To determine operational policy;

(3) To elect a chairperson and officers, to serve two-year terms. The chairperson and officers may not succeed themselves;

(4) To establish committees of the Board as needed;

(5) To appoint a multidisciplinary advisory council for input and advice on policy matters;

(6) To implement the major functions of the Center for Nursing as established in the goals set out in subsection (a) of this section; and

(7) To seek and accept non-State funds for carrying out Center policy.

(d) The Board shall receive the per diem and allowances prescribed by G.S. 138-5 for State boards and commissions.

"*§ 90-171.72. North Carolina Center for Nursing; State support.*

The General Assembly finds that it is imperative that the State protect its investment and progress made in its nursing efforts to date. The General Assembly further finds that the North Carolina Center for Nursing is the appropriate means to do so. The Center shall have State budget support for its operations so that it may have adequate resources for the tasks the General Assembly has set out in this Article."

Sec. 4. The Board of Nursing shall review the current nursing curricula requirements, including those in clinical settings, for their relevancy in current practice settings in North Carolina. This review shall focus on ensuring the use of all available clinical settings in order to serve the maximum number of nursing students, on an educationally sound basis.

Sec. 5. The Department of Community Colleges shall encourage those community colleges with both associate degree nursing programs and college transfer programs to counsel their nursing students to take as many of their courses as practical from the college transfer course offerings. The intent of this counseling is to enhance the educational mobility of nurses by increasing the number

of community college courses transferable to baccalaureate nursing programs.

Sec. 6. Funding authorized for the development of clinical sites in Section 2 of Chapter 794 of the 1989 Session Laws may be used to train preceptors at self-selected clinical sites if these sites meet the rural, long-term care, and critical care, shortage guidelines specified in Section 1 of Chapter 560 of the 1989 Session Laws. These funds may also be used to develop clinical sites not meeting these shortage areas if the new sites will specifically expand enrollment capacity at a school of nursing.

Sec. 7. The General Assembly finds that the State should expand its efforts to recruit nurses to rural areas and long-term care settings. The Department of Community Colleges and the Board of Governors of The University of North Carolina shall ensure that the schools of nursing in the community college system and in The University of North Carolina system make every effort to provide their students with exposure to clinical experience in rural areas and at long-term care sites.

Sec. 8. The Office of State Personnel shall review the improvements in nurse recruitment at the University of North Carolina Hospitals at Chapel Hill to determine if similar improvements would be possible elsewhere in State government.

Sec. 9. The General Assembly finds that vacancies in public health agencies have a significant impact on the State's implementation of various health programs. The General Assembly urges counties to keep salaries for public health nurses competitive with the salaries of other nurses.

Sec. 10. The Department of Public Instruction shall meet with admissions officers from those community colleges, constituent institutions of The University of North Carolina, and private colleges and universities, that have nursing programs, to acquaint admissions officers with the academic requirements, changes, and academic content of the Health Occupations curriculum. The Board of Governors of The University of North Carolina shall require the admissions officers of the appropriate constituent institutions to determine whether health occupations education courses, taken as electives beyond the minimum academic admissions requirements of The University of North Carolina, may be viewed as enhancing a student's preparation for academic pursuit of a health career rather than as a detriment to consideration for university admission. The Board shall require the admissions officers to report their evaluation and findings to the Department of Public Instruction by March 31, 1992.

Sec. 11. The Department of Community Colleges, the Board of Governors of The University of North Carolina, and the North Carolina Association of Private and Independent Colleges and Universities shall continue efforts to require that their schools of nursing attract nursing students from minority populations and nontraditional student groups.

Sec. 12. The General Assembly urges the health care industry to cooperate with the Area Health Education Centers and with schools of nursing in providing expanded summer experiences in health care for high school students. The General Assembly encourages the health care industry to continue and to expand its financial assistance in providing these programs.

Sec. 13. The General Assembly finds that differentiated practice models that are based on clinical experience and expertise and then used as personnel deployment systems can have positive impacts on the quality of patient care and satisfaction and retention of experienced nurses in the practice setting. Therefore, the Office of State Personnel shall select a State institution employing nurses to experiment with such a differentiated practice model. For the duration of the experiment, the State Personnel Commission may waive rules adopted to implement Chapter 126 of the General Statutes regulating the hiring and paying of State employees, other than those that guarantee freedom from race, gender, and age discrimination, that are necessary to carry out the experiment. The Office of State Personnel shall report the results of the experiment by June 1, 1993, including recommendations on changes that would need to be made to Chapter 126 of the General Statutes if the report concludes that the experiment should be continued, or made a statewide program.

Sec. 14. Nothing contained in this act shall be construed as obligating the General Assembly to appropriate funds. Sections of this act requiring State funding for implementation shall not become effective until such funds are appropriated.

Sec. 15. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 512 **CHAPTER 551**

AN ACT TO RATIFY THE PROCEDURE FOR APPOINTING THE MEMBERS OF THE SEDIMENTATION CONTROL COMMISSION IN ACCORDANCE WITH AN OPINION OF THE ATTORNEY GENERAL DATED 10 JULY 1974 AND TO ADD AN ADDITIONAL MEMBER TO THE COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-299 reads as rewritten:

"*§ 143B-299. Sedimentation Control Commission -- members; selection; compensation; meetings.*

(a) Creation; Membership. -- There is hereby created in the Department of Environment, Health, and Natural Resources the North Carolina Sedimentation Control Commission, which is charged with the duty of developing and administering the sedimentation control program provided for in this Article. The Commission shall consist of the following members:

(1) ~~The Secretary of Environment, Health, and Natural Resources, who shall be chairman, and who may designate some other officer in the Department to act in his stead;~~ A person to be nominated jointly by the boards of the North Carolina League of Municipalities and the North Carolina Association of County Commissioners;

(2) A person to be nominated by the Board of the North Carolina Home Builders Association;

(3) A person to be nominated by the Carolinas Branch, Associated General Contractors of America;

(4) The president, vice-president, or general counsel of a North Carolina public utility company;

(5) The Director of the North Carolina Water Resources Research Institute;

(6) A member of the State Mining Commission who shall be a representative of nongovernmental conservation interests, as required by G.S. 74-38(b);

(7) A member of the State Soil and Water Conservation Commission;

(8) A member of the Environmental Management Commission;

(9) A soil scientist from the faculty of North Carolina State University; ~~and~~

(10) Two persons who shall be representatives of nongovernmental conservation ~~interests.~~ interests; and

(11) A professional engineer registered under the provisions of Chapter 89C of the General Statutes nominated by the Professional Engineers of North Carolina, Inc.

(b) Appointment. -- The Commission members shall be appointed by the ~~Governor and all initial appointments shall be made on or before August 1, 1973.~~ Governor. All Commission members, except the person filling position number five, as specified above, shall serve staggered terms of office of three ~~years.~~ years and until their successors are appointed and duly qualified. The person filling position number five shall serve as a member of the Commission,

subject to removal by the Governor as hereinafter specified in this section, so long as he continues as Director of the Water Resources Research Institute. ~~The initial terms of office for members filling positions two, three, and four, as specified above, shall expire June 30, 1975; thereafter, the terms of office for members filling those positions shall be three years.~~ The terms of office of members filling positions two, four, seven, and eight shall expire on 30 June of years evenly divisible by three. The terms of office of members filling positions one, three, and ten shall expire on 30 June of years that follow by one year those years that are evenly divisible by three. The terms of office of members filling positions six, nine, and eleven shall expire on 30 June of years that precede by one year those years that are evenly divisible by three. ~~All Commission members serving on June 30, 1981, shall be eligible to complete their respective terms.~~ Except for the person filling position number five, no member ~~appointed to~~ of the Commission ~~on or after July 1, 1981,~~ shall serve more than two complete consecutive three-year terms. Any member appointed by the Governor to fill a vacancy occurring in any of the appointments shall be appointed for the remainder of the term of the member causing the vacancy. The Governor may at any time remove any member of the Commission for inefficiency, neglect of duty, malfeasance, misfeasance, nonfeasance or, in the case of members filling positions ~~one,~~ five, six, seven, eight, ~~and~~ nine, and eleven, as specified above, because they no longer possess the required qualifications for membership. In each instance appointments to fill vacancies in the membership of the Commission shall be a person or persons with similar experience and qualifications in the same field required of the member being replaced. The office of the North Carolina Sedimentation Control Commission is declared to be an office that may be held concurrently with any other elective or appointive office, under the authority of Article VI, Sec. 9, of the North Carolina Constitution.

(b1) Chairman. -- The Governor shall designate a member of the Commission to serve as chairman.

(c) Compensation. -- The members of the Commission shall receive the usual and customary per diem allowed for the other members of boards and commissions of the State and as fixed in the Biennial Appropriation Act, and, in addition, the members of the Commission shall receive subsistence and travel expenses according to the prevailing State practice and as allowed and fixed by statute for such purposes, which said travel expenses shall also be allowed while going to or from any place of meeting or when on official business for the Commission. The per diem payments made to each member of the Commission shall include necessary time spent in traveling to and

from their places of residence within the State to any place of meeting or while traveling on official business for the Commission.

(d) Meetings of Commission. -- The Commission shall meet at the call of the chairman and shall hold special meetings at the call of a majority of the members."

Sec. 2. In order to reestablish a schedule of staggered terms of three years for the Sedimentation Control Commission, the terms of members of the Commission filling positions established by G.S. 143B-299(a) are extended by one year as follows: position number three shall expire on 30 June 1993 instead of 30 June 1992, and positions number six and nine shall expire on 30 June 1994 instead of 30 June 1993. The term of the member of the Commission filling position eleven, which is added by this act, shall expire 30 June 1994.

Sec. 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The Sedimentation Control Commission and the Department of Environment, Health, and Natural Resources shall implement the provisions of this act from funds otherwise appropriated or available to the Commission or to the Department.

Sec. 4. This act becomes effective 1 July 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 551 **CHAPTER 552**

AN ACT TO IMPLEMENT THE REQUIREMENTS OF THE 1990 AMENDMENTS TO THE FEDERAL CLEAN AIR ACT.

Whereas, in 1990 the Congress of the United States enacted extensive amendments to the federal Clean Air Act; and

Whereas, these amendments dramatically increase the responsibilities of State regulatory agencies and place a great and imminent burden on the State to finance, develop, and implement new State air quality programs for air emission source permitting, nonattainment area permitting, automobile inspection and maintenance, regulation of toxic air pollutants, acid rain control, and compliance enforcement, among others; and

Whereas, these amendments require the State to make comprehensive changes in existing State air quality programs; and

Whereas, failure to implement these amendments will subject the State to federal sanctions; and

Whereas, the Environmental Management Commission must have all of the statutory authority in place to begin the administrative rule-

making process for adoption and implementation of those elements no later than 15 November 1992; and

Whereas, it is the policy of the State to afford the public a full and complete opportunity for public hearing and comment as a part of the administrative rule-making process; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-213 is amended by adding a new subdivision to read:

"(29a) 'Title V' means Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 *et seq.*)."

Sec. 2. G.S. 143-215.3(a) reads as rewritten:

"(a) Additional Powers. -- In addition to the specific powers prescribed elsewhere in this Article, and for the purpose of carrying out its duties, the Commission shall have the power:

(1) To make rules implementing Articles 21, 21A, 21B, or 38 of this Chapter.

(1a) To charge fees for the following:

a. Processing of applications for permits or registrations issued under Articles 21, 21A, 21B, and 38 of this Chapter;

b. Administering permits or registrations issued under Articles 21, 21A, 21B, or 38 of this Chapter including monitoring compliance with the terms of those permits; and

c. Reviewing, processing, and publicizing applications for construction grant awards under the Federal Water Pollution Control Act.

No fee may be charged under this provision, however, to a farmer who submits an application that pertains to his farming operations.

(1b) The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing of an application for a permit under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B of this Chapter may not exceed four hundred dollars ($400.00). The fee to be charged pursuant to G.S. 143-215.3(a)(1a) for processing an application for a registration under Article 38 of this Chapter may not exceed fifty dollars ($50.00) for any single application, except that a penalty of as much as twenty percent (20%) of the fee may be assessed for late registration. The fee for administering and compliance monitoring under G.S. 143-215.1 of Article 21 and G.S. 143-215.108 and G.S. 143-215.109 of Article 21B shall be

charged on an annual basis for each year of the permit term and may not exceed one thousand five hundred dollars ($1,500) per year. Fees for processing all permits under Article 21A and all other Sections of Articles 21 and 21B shall not exceed one hundred dollars ($100.00) for any single permit. Notwithstanding any other provision of this subdivision, the total payment for fees required for all permits under this subsection for any single facility shall not exceed seven thousand five hundred dollars ($7,500) per year, which amount shall include all application fees and fees for administration and compliance monitoring. A single facility is defined to be any contiguous area under one ownership and in which permitted activities occur. For all permits issued under these Articles where a fee schedule is not specified in the statutes, the Commission, or other commission specified by statute shall adopt a fee schedule in a rule following the procedures established by the Administrative Procedure Act. Such fee schedules shall be established to reflect the size of the emission or discharge, the potential impact on the environment, the staff costs involved, relative costs of the issuance of new permits and the reissuance of existing permits, and shall include adequate safeguards to prevent unusual fee assessments which would result in serious economic burden on an individual applicant. A system shall be considered to allow consolidated annual payments for persons with multiple permits. In its rulemaking to establish fee schedules, the Commission is also directed to consider a method of rewarding facilities which achieve full compliance with administrative and self-monitoring reporting requirements, and to consider, in those cases where the cost of renewal or amendment of a permit is less than for the original permit, a lower fee for such renewal or amendment.

(1c) Monies collected pursuant to G.S. 143-215.3(a)(1a) shall be used to:

a. Eliminate, insofar as possible, backlogs of permit applications awaiting agency action;
b. Improve the quality of permits issued;
c. Improve the rate of compliance of permitted activities with environmental standards; and
d. Decrease the length of the processing period for permit applications.

(1d) The Commission may adopt and implement a graduated fee schedule sufficient to cover all reasonable direct and

indirect costs required for the State to develop and administer a permit program which meets the requirements of Title V. The provisions of subdivision (1b) of this subsection do not apply to the adoption of a fee schedule under this subdivision. In adopting and implementing a fee schedule, the Commission shall require that the owner or operator of all air contaminant sources subject to the requirement to obtain a permit under Title V to pay an annual fee, or the equivalent over some other period, sufficient to cover costs as provided in section 502(b)(3)(A) of Title V. The fee schedule shall be adopted according to the procedures set out in Chapter 150B of the General Statutes.

a. The total amount of fees collected under the fee schedule adopted pursuant to this subdivision shall conform to the requirements of section 502(b)(3)(B) of Title V. No fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant, as defined in section 502(b)(3)(B)(ii) of Title V, emitted by any source. Fees collected pursuant to this subdivision shall be used solely to cover all reasonable direct and indirect costs required to develop and administer the Title V permit program.

b. The Commission may reduce any permit fee required under this section to take into account the financial resources of small business stationary sources as defined under Title V and regulations promulgated by the United States Environmental Protection Agency.

c. When funds in the Title V nonreverting account established in G.S. 143-215.3A exceed the total amount necessary to cover the cost of the Title V program for the next fiscal year, the Secretary shall reduce the amount billed for the next fiscal year so that the excess funds are used to supplement the cost of administering the Title V permit program in that fiscal year.

(2) To direct that such investigation be conducted as it may reasonably deem necessary to carry out its duties as prescribed by this ~~Article,~~ Article or Article 21B of this Chapter, and for this purpose to enter at reasonable times upon any property, public or private, for the purpose of investigating the condition of any waters and the discharge therein of any sewage, industrial waste or other waste or for the purpose of investigating the condition of the air, air pollution, air contaminant sources, emissions or the

installation and operation of any air-cleaning devices, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the operation of any air-cleaning device, sewer system, disposal system or treatment works: Provided that any records, reports or information obtained under Articles 21, 21A and 21B (i) shall, in the case of effluent or emission data, be related to any applicable effluent or emission limitations, toxic, pretreatment or new source performance standards, and (ii) shall be available to the public except that upon a showing satisfactory to the Commission by any person that records, reports or information or particular part thereof (other than effluent or emission data), to which the Commission has access under these Articles, if made public would divulge methods or processes entitled to protection as trade secrets of such person, the Commission shall consider such record, report or information, or particular portion thereof confidential, except that such record or information may be disclosed to employees of the department concerned with carrying out the provisions of these Articles or when relevant in any proceeding under these Articles. The Commission shall provide for adequate notice to the party submitting the information of any decision that such information is not entitled to confidential treatment and of any decision to release information which the submitting party contends is entitled to confidential treatment. No person shall refuse entry or access to any authorized representative of the Commission or Department who requests entry for purposes of inspection, and who presents appropriate credentials, nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out his official duties.

(3) To conduct public hearings and to delegate the power to conduct public hearings in accordance with the procedures prescribed by this Article.

(4) To delegate such of the powers of the Commission as the Commission deems necessary to one or more of its members, to the Secretary or any other qualified employee of the Department; provided, that the provisions of any such delegation of power shall be set forth in the rules of the Commission; and provided further that the Commission shall not delegate to persons other than its own members and the designated employees of the Department the power to conduct hearings with respect to the classification of

waters, the assignment of classifications, air quality standards, air contaminant source classifications, emission control standards, or the issuance of any special order except in the case of an emergency under ~~subsection (a)(12)~~ subdivision (12) of this subsection for the abatement of existing water or air pollution. Any employee of the Department to whom a delegation of power is made to conduct a hearing shall report the hearing with its evidence and record to the Commission.

(5) To institute such actions in the superior court of any county in which a violation of this ~~Article~~ Article, Article 21B of this Chapter, or the rules of the Commission has occurred, or, in the discretion of the Commission, in the superior court of the county in which any defendant resides, or has his or its principal place of business, as the Commission may deem necessary for the enforcement of any of the provisions of this ~~Article~~ Article, Article 21B of this Chapter, or of any official action of the Commission, including proceedings to enforce subpoenas or for the punishment of contempt of the Commission.

(6) To agree upon or enter into any settlements or compromises of any actions and to prosecute any appeals or other proceedings.

(7) To direct the investigation of any killing of fish and wildlife which, in the opinion of the Commission, is of sufficient magnitude to justify investigation and is known or believed to have resulted from the pollution of the waters or air as defined in this Article, and whenever any person, whether or not he shall have been issued a certificate of approval, permit or other document of approval authorized by this or any other State law, has negligently, or carelessly or unlawfully, or willfully and unlawfully, caused pollution of the waters or air as defined in this Article, in such quantity, concentration or manner that fish or wildlife are killed as the result thereof, the Commission, may recover, in the name of the State, damages from such person. The measure of damages shall be the amount determined by the Department and the North Carolina Wildlife Resources Commission, whichever has jurisdiction over the fish and wildlife destroyed to be the replacement cost thereof plus the cost of all reasonable and necessary investigations made or caused to be made by the State in connection therewith. Upon receipt of the estimate of damages caused, the Department shall notify the persons responsible for the

destruction of the fish or wildlife in question and may effect such settlement as the Commission may deem proper and reasonable, and if no settlement is reached within a reasonable time, the Commission shall bring a civil action to recover such damages in the superior court in the county in which the discharge took place. Upon such action being brought the superior court shall have jurisdiction to hear and determine all issues or questions of law or fact, arising on the pleadings, including issues of liability and the amount of damages. On such hearing, the estimate of the replacement costs of the fish or wildlife destroyed shall be **prima facie** evidence of the actual replacement costs of such fish or wildlife. In arriving at such estimate, any reasonably accurate method may be used and it shall not be necessary for any agent of the Wildlife Resources Commission or the Department to collect, handle or weigh numerous specimens of dead fish or wildlife.

The State of North Carolina shall be deemed the owner of the fish or wildlife killed and all actions for recovery shall be brought by the Commission on behalf of the State as the owner of the fish or wildlife. The fact that the person or persons alleged to be responsible for the pollution which killed the fish or wildlife holds or has held a certificate of approval, permit or other document of approval authorized by this Article or any other law of the State shall not bar any such action. The proceeds of any recovery, less the cost of investigation, shall be used to replace, insofar as and as promptly as possible, the fish and wildlife killed, or in cases where replacement is not practicable, the proceeds shall be used in whatever manner the responsible agency deems proper for improving the fish and wildlife habitat in question. Any such funds received are hereby appropriated for these designated purposes. Nothing in this paragraph shall be construed in any way to limit or prevent any other action which is now authorized by this Article.

(8) After issuance of an appropriate order, to withhold the granting of any permit or permits pursuant to G.S. 143-215.1 or 143-215.108 for the construction or operation of any new or additional disposal system or systems or air-cleaning device or devices in any area of the State. Such order may be issued only upon determination by the Commission, after public hearing, that the permitting of any new or additional source or sources of water or air

pollution will result in a generalized condition of water or air pollution within the area contrary to the public interest, detrimental to the public health, safety, and welfare, and contrary to the policy and intent declared in this ~~Article.~~ Article or Article 21B of this Chapter. The Commission may make reasonable distinctions among the various sources of water and air pollution and may direct that its order shall apply only to those sources which it determines will result in a generalized condition of water or air pollution.

The determination of the Commission shall be supported by detailed findings of fact and conclusions set forth in the order and based upon competent evidence of record. The order shall describe the geographical area of the State affected thereby with particularity and shall prohibit the issuance of permits pending a determination by the Commission that the generalized condition of water or air pollution has ceased.

Notice of hearing shall be given in accordance with the provisions of G.S. 150B-12.

A person aggrieved by an order of the Commission under this subdivision may seek judicial review of the order under Article 4 of Chapter 150B of the General Statutes without first commencing a contested case. An order may not be stayed while it is being reviewed.

(9) If an investigation conducted pursuant to this Article or Article 21B of this Chapter reveals a violation of any rules, standards, or limitations adopted by the Commission pursuant to this ~~Article,~~ Article or Article 21B of this Chapter, or a violation of any terms or conditions of any permit issued pursuant to G.S. 143-215.1 or 143-215.108, or special order or other document issued pursuant to G.S. 143-215.2 or ~~143-215.109,~~ G.S. 143-215.110, the Commission may assess the reasonable costs of any investigation, inspection or monitoring survey which revealed the violation against the person responsible therefor. If the violation resulted in an unauthorized discharge to the waters or atmosphere of the State, the Commission may also assess the person responsible for the violation for any actual and necessary costs incurred by the State in removing, correcting or abating any adverse effects upon the water or air resulting from the unauthorized discharge. If the person responsible for the violation refuses or fails within a reasonable time to pay any sums

assessed, the Commission may institute a civil action in the superior court of the county in which the violation occurred or, in the Commission's discretion, in the superior court of the county in which such person resides or has his or its principal place of business, to recover such sums.

(10) To require a laboratory facility to be certified by the Department before performing any tests, analyses, measurements, or monitoring required under this Article or Article 21B of this Chapter and to establish fees therefor. These fees collected by the Department shall remain available to the Department to be used to offset the cost of certifying commercial, industrial, and municipal laboratory facilities.

(11) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

(12) To declare an emergency when it finds that a generalized condition of water or air pollution which is causing imminent danger to the health or safety of the public. Regardless of any other provisions of law, if the Department finds that such a condition of water or air pollution exists and that it creates an emergency requiring immediate action to protect the public health and safety or to protect fish and wildlife, the Secretary of the Department with the concurrence of the Governor, shall order persons causing or contributing to the water or air pollution in question to reduce or discontinue immediately the emission of air contaminants or the discharge of wastes. Immediately after the issuance of such order, the chairman of the Commission shall fix a place and time for a hearing before the Commission to be held within 24 hours after issuance of such order, and within 24 hours after the commencement of such hearing, and without adjournment thereof, the Commission shall either affirm, modify or set aside the order.

In the absence of a generalized condition of air or water pollution of the type referred to above, if the Secretary finds that the emissions from one or more air contaminant sources or the discharge of wastes from one or more sources of water pollution is causing imminent danger to human health and safety or to fish and wildlife, he may with the concurrence of the Governor order the person or persons responsible for the operation or operations in question to immediately reduce or discontinue the emissions of air contaminants or the discharge of wastes or

to take such other measures as are, in his judgment, necessary, without regard to any other provisions of this ~~Article.~~ Article of Article 21B of this Chapter. In such event, the requirements for hearing and affirmance, modification or setting aside of such orders set forth in the preceding paragraph of this subdivision shall apply.

(13) Repealed by Session Laws 1983, c. 296, s. 6, effective May 11, 1983.

(14) To certify and approve, by appropriate delegations and conditions in permits required by G.S. 143-215.1, requests by publicly owned treatment works to implement, administer and enforce a pretreatment program for the control of pollutants which pass through or interfere with treatment processes in such treatment works; and to require such programs to be developed where necessary to comply with the Federal Water Pollution Control Act and the Resource Conservation and Recovery Act, including the addition of conditions and compliance schedules in permits required by G.S. 143-215.1. Pretreatment programs submitted by publicly owned treatment works shall include, at a minimum, the adoption of pretreatment standards, a permit or equally effective system for the control of pollutants contributed to the treatment works, and the ability to effectively enforce compliance with the program.

(15) To adopt rules for the prevention of pollution from underground tanks containing petroleum, petroleum products, or hazardous substances. Rules adopted under this section may incorporate standards and restrictions which exceed and are more comprehensive than comparable federal regulations.

(16) To adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing phosphorus pursuant to G.S. 143-214.4(e), and to adopt rules limiting the manufacture, storage, sale, distribution or use of cleaning agents containing nitrilotriacetic acid.

(17) (Expires December 31, 1998) To adopt rules to implement Part 2A of Article 21A of Chapter 143."

Sec. 3. G.S. 143-215.3A reads as rewritten:

"§ *143-215.3A. Use of application and permit fees.*

(a) There is established a separate nonreverting account within the Department of Environment, Health, and Natural Resources. The account may be used, to the extent appropriated by the General Assembly, to ~~(a)~~ (i) defray the expenses of any project or program supporting the permitting and compliance activities needed to protect

the State's surface water, groundwater, and air quality, and ~~(b)~~ (ii) establish additional permanent positions, under the Personnel Act, for water, groundwater, and air quality permitting and compliance activities. All application fees and permit administration fees collected by the State for permits issued under Articles 21, 21A, 21B, and 38, except those collected under Part 2 of Article 21A and deposited in the Oil or Other Hazardous Substances Pollution Protection ~~Fund,~~ Fund and those collected pursuant to G.S. 143-215.3(a)(1d) and deposited in the Title V nonreverting account, and except as provided in G.S. 143-215.28A and G.S. 143-215.3B shall be credited to the account. The total monies collected per year from fees for permits under G.S. 143-215.3(a)(1a), after deducting those monies collected under G.S. 143-215.3(a)(1d), shall not exceed thirty percent (30%) of the total budgets from all sources of environmental permitting and compliance programs within the Department of Environment, Health, and Natural Resources.

(b) There is also established a separate nonreverting account within the Department of Environment, Health, and Natural Resources. The account shall be used, to the extent appropriated by the General Assembly, exclusively for developing and implementing a permit program that meets the requirements of Title V. The Title V nonreverting account shall consist of fees collected pursuant to G.S. 143-215.3(a)(1d) and G.S. 143-215.106A. Expenses of the Air Quality Compliance Advisory Panel, the ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program, support staff, equipment, legal services provided by the Attorney General, and contracts with consultants and program expenses listed in section 502(b)(3)(A) of Title V shall be included among Title V program expenses.

(c) The Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the State's environmental permitting programs contained within such Department. In addition, the Department shall make an annual report to the General Assembly and its Fiscal Research Division on the cost of the Title V program. The ~~report~~ reports shall include, but ~~is~~ are not limited to, fees set and established under this Article, fees collected under this Article, revenues received from other sources for environmental permitting and compliance programs, changes made in the fee schedule since the last report, anticipated revenues from all other sources, interest earned and any other information requested by the General Assembly."

Sec. 4. G.S. 143-215.114A(a) reads as rewritten:

"(a) A civil penalty of not more than ~~five~~ ten thousand dollars ~~($5,000)~~ ($10,000) may be assessed by the Secretary against any person who:

(1) Violates any classification, standard or limitation established pursuant to G.S. 143-215.107;

(2) Is required but fails to apply for or to secure a permit required by G.S. 143-215.108 or who violates or fails to act in accordance with the terms, conditions, or requirements of such permit;

(3) Violates or fails to act in accordance with the terms, conditions, or requirements of any special order or other appropriate document issued pursuant to G.S. 143-215.110;

(4) Fails to file, submit, or make available, as the case may be, any documents, data or reports required by this Article or Parts 1 or 7 of Article 21 of this Chapter;

(5) Violates a rule of the Commission or a local governing body implementing this ~~Article.~~ Article or Parts 1 or 7 of Article 21;

(6) Violates the offenses set out in G.S. 143-215.114B."

Sec. 5. G.S. 143-215.108 reads as rewritten:

"*§ 143-215.108. Control of sources of air pollution; permits required.*

(a) After the effective date applicable to any air quality or emission control standards established pursuant to G.S. 143-215.107, no person shall do any of the following things or carry out any of the following activities which contravene or will be likely to contravene such standards until or unless such person shall have applied for and shall have received from the Commission a permit therefor and shall have complied with such conditions, if any, as are prescribed by such permit:

(1) Establish or operate any air contaminant source;

(2) Build, erect, use or operate any equipment which may result in the emission of air contaminants or which is likely to cause air pollution;

(3) Alter or change the construction or method of operation of any equipment or process from which air contaminants are or may be emitted;

(4) Enter into ~~a [an]~~ an irrevocable contract for the construction and installation of any air-cleaning device, or allow or cause such device to be constructed, installed, or operated.

(b) The Commission shall act upon all applications for permits so as to effectuate the purpose of this section, by reducing existing air pollution and preventing, so far as reasonably possible, any increased pollution of the air from any additional or enlarged sources.

The Commission shall have the power:

(1) To grant and renew a permit with such conditions attached as the Commission believes necessary to achieve the purposes of this section;

(2) To grant and renew any temporary permit for such period of time as the Commission shall specify even though the action allowed by such permit may result in pollution or increase pollution where conditions make such temporary permit essential;

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;

(4) To require all applications for permits and renewals to be in writing and to prescribe the form of such applications;

(5) To request such information from an applicant and to conduct such inquiry or investigation as it may deem necessary and to require the submission of plans and specifications prior to acting on any application for a permit;

(5a) To require that an applicant satisfy the Department that the applicant, or any parent, subsidiary, or other affiliate of the applicant or parent:

a. Is financially qualified to carry out the activity for which a permit is required under subsection (a); and

b. Has substantially complied with the air quality and emission control standards applicable to any activity in which the applicant has previously engaged, and has been in substantial compliance with federal and state laws, regulations, and rules for the protection of the environment.

As used in this subdivision, the words 'affiliate,' 'parent,' and 'subsidiary' have the same meaning as in 17 Code of Federal Regulations § 240.12b-2 (1 April 1990 Edition);

(6) To adopt rules, as it deems necessary, establishing the form of applications and permits and procedures for the granting or denial of permits and renewals pursuant to this section; and all permits, renewals and denials shall be in writing;

(7) To prohibit any stationary source within the State from emitting any air pollutant in amounts which will prevent attainment or maintenance by any other state of any national ambient air quality standard, or interference with measures required to be included in the applicable implementation plan for any other state to prevent deterioration of air quality or protect ~~visibility.~~ visibility; and

(8) To designate certain classes of activities for which a general permit may be issued, after considering the environmental impact of an activity, the frequency of the activity, the need for individual permit oversight, and the need for public review and comment on individual permits.

(c) The Commission shall act on a permit application as quickly as possible. The Commission may conduct any inquiry or investigation it considers necessary before acting on an application and may require an applicant to submit plans, specifications, and other information the Commission considers necessary to evaluate the application. If the Commission fails to act on an application for a permit within 90 days after the applicant submits all information required by the Commission, the application is considered to be approved.

(d) No permit issued pursuant to this section shall be issued or renewed for a term exceeding five years.

(e) A permit applicant or permittee who is dissatisfied with a decision of the Commission may commence a contested case by filing a petition under G.S. 150B-23 within 30 days after the Commission notifies the applicant or permittee of its decision. If the permit applicant or permittee does not file a petition within the required time, the Commission's decision on the application is final and is not subject to review.

~~(c)~~ (f) Any person who is required to hold a permit under this section shall submit to the Department a written description of his current and projected plans to reduce the emission of air contaminants under such permit by source reduction or recycling. The written description shall accompany the payment of the annual permit fee. The written description shall also accompany any application for a new permit, or for modification of an existing permit, under this section. The written description required by this subsection shall not be considered part of a permit application and shall not serve as the basis for the denial of a permit or permit modification."

Sec. 6. G.S. 143B-317 reads as rewritten:

"*§ 143B-317. Air Quality ~~Council~~ Compliance Advisory Panel -- creation; powers and duties.*

There is hereby created the Air Quality ~~Council~~ Compliance Advisory Panel of the Department of Environment, Health, and Natural Resources. The Air Quality ~~Council~~ Compliance Advisory Panel shall have the following functions and duties:

(1) ~~To advise the Environmental Management Commission in the development of rules, regulations and quality standards for air; and~~ To render advisory opinions concerning the effectiveness of the small business stationary source technical and environmental compliance assistance program,

difficulties encountered, and degree and severity of enforcement.

~~(2) To consider and to advise the Commission upon any matter the Commission may refer to it.~~ To make periodic reports to the Administrator of the United States Environmental Protection Agency concerning the compliance of the State Small Business Stationary Source Technical and Environmental Compliance Assistance Program with the requirements of the Paperwork Reduction Act, 44 U.S.C. § 3501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. § 601 *et seq.*; and the Equal Access to Justice Act, 5 U.S.C. § 504 *et seq.*

(3) To review information for small business stationary sources to assure such information is understandable by the layperson."

Sec. 7. G.S. 143B-318 reads as rewritten:

"§ *143B-318. Air Quality ~~Council~~ Compliance Advisory Panel -- members; chairman; selection; removal; compensation; quorum; services.*

(a) The Air Quality ~~Council~~ Compliance Advisory Panel of the Department of Environment, Health, and Natural Resources shall consist of ~~nine members appointed by the Governor. The composition of the Council shall be as follows: one registered professional engineer knowledgeable in matters of air pollution; one representative from municipal government; one representative from county government; one representative of public health; two representatives from industry providing they are from different industries; one representative of agriculture; one licensed physician knowledgeable in the health aspects of air pollution; and one practicing biologist knowledgeable in the principles of air quality management.~~ two members who are not owners or representatives of owners of small business stationary sources, appointed by the Governor to represent the general public; two members appointed one each by the Speaker and the minority leader of the House of Representatives, and who are owners, or who represent owners, of small business stationary sources; two members appointed one each by the President Pro Tempore and the minority leader of the Senate, who are owners, or who represent owners, of small business stationary sources; and one member appointed by the Secretary of the Department of Environment, Health, and Natural Resources.

(b) The Governor shall designate one member of the ~~Council~~ Panel to serve as chairman at his pleasure.

(c) Members shall serve staggered terms of four years. In order to achieve staggered terms, ~~the Governor~~ the Speaker and the minority leader of the House of Representatives shall initially appoint ~~three~~

members for terms of two years, the President Pro Tempore and the minority leader of the Senate shall initially appoint ~~three~~ members for terms of ~~four~~ three ~~years, and three members for terms of six~~ years. At the end of the respective terms of office of the initial members, their successors shall be appointed for terms of ~~six~~ four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the ~~Council~~ Panel created by the resignation, dismissal, death or disability of a member shall be for the balance of the unexpired term.

(d) The Governor shall have the power to remove any member of the ~~Council~~ Panel from office for misfeasance, malfeasance or nonfeasance in accordance with the provisions of G.S. ~~143B-16 of the Executive Organization Act of 1973.~~ 143B-16.

(e) The members of the ~~Council~~ Panel shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(f) A majority of the ~~Council~~ Panel shall constitute a quorum for the transaction of their business.

(g) The Secretary of Environment, Health, and Natural Resources shall designate an office within the Department of Environment, Health, and Natural Resources to serve as ombudsman for the Small Business Stationary Source Technical and Environmental Compliance Assistance Program established by the Department pursuant to section 507 of Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 *et seq.*). The Small Business Stationary Source Technical and Environmental Compliance Assistance Program shall serve as the secretariat for the development and dissemination of reports and advisory opinions issued by the Panel. The Panel and the ombudsman shall exercise their powers consistent with G.S. 143B-14(b).

(h) All clerical and other services required by the ~~Council~~ Panel shall be supplied by the Secretary of Environment, Health, and Natural Resources."

Sec. 8. G.S. 143B-319 reads as rewritten:

"§ *143B-319. Air Quality ~~Council~~ Compliance Advisory Panel -- meetings.*

The ~~Council~~ Panel shall meet at least semiannually and may hold special meetings at any time and place at the call of the chairman or upon the written request of at least ~~five~~ three members."

Sec. 9. G.S. 143-215.107(a) reads as rewritten:

"(a) Duty to Adopt Plans, Standards, etc. -- The Commission is hereby directed and empowered, as rapidly as possible within the limits of funds and facilities available to it, and subject to the procedural requirements of this Article and Article 21:

(1) To prepare and develop, after proper study, a comprehensive plan or plans for the prevention, abatement and control of air pollution in the State or in any designated area of the State.

(2) To determine by means of field sampling and other studies, including the examination of available data collected by any local, State or federal agency or any person, the degree of air contamination and air pollution in the State and the several areas of the State.

(3) To develop and adopt, after proper study, air quality standards applicable to the State as a whole or to any designated area of the State as the Commission deems proper in order to promote the policies and purposes of this Article and Article 21 most effectively.

(4) To collect information or to require reporting from classes of sources which, in the judgment of the Environmental Management Commission, may cause or contribute to air pollution. Any person operating or responsible for the operation of air contaminant sources of any class for which the Commission requires reporting shall make reports containing such information as may be required by the Commission concerning location, size, and height of contaminant outlets, processes employed, fuels used, and the nature and time periods or duration of emissions, and such other information as is relevant to air pollution and available or reasonably capable of being assembled.

(5) To develop and adopt such emission control standards as in the judgment of the Commission may be necessary to prohibit, abate or control air pollution commensurate with established air quality standards. Such standards may be applied uniformly to the State as a whole or to any area of the State designated by the Commission.

(6) To adopt, when necessary and practicable, a program for testing emissions from motor vehicles and to adopt motor vehicle emission standards in compliance with applicable federal regulations.

(7) To develop and adopt standards and plans necessary to implement programs for the prevention of significant deterioration and for the attainment of air quality standards in nonattainment areas; provided, that the Commission shall adopt no standard which is not made mandatory upon approved State programs by rules, regulations or published guidelines of the United States Environmental Protection Agency or the Federal Clean Air Act.

(8) To regulate the use of sulfur dioxide allowances in accordance with Title IV of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2584 *et seq.*), as amended, and regulations promulgated by the United States Environmental Protection Agency."

Sec. 10. Article 21B of Chapter 143 is amended by adding a new section to read:

"*§ 143-215.106A. Assessments to establish Title V program.*

(a) The holders of permits issued by the Commission for the control of sources of air pollution are assessed Title V program implementation fees on an annual basis in accordance with the schedule established in this section. The assessments are in addition to any other fees required to be paid by the permit holders in conjunction with the permits. The assessments shall be deposited in the separate nonreverting account established by G.S. 143-215.3A(b) for the Title V program, and shall be used only to defray the eligible expenses of the Title V program. The Secretary shall issue annual notices of the assessments to permit holders on or before 1 July of each fiscal year. Each notice of assessment shall include a summary of the data on which the assessment is based. Assessments shall be payable 30 days after receipt of notice. Failure to make timely payment within 90 days shall be grounds to revoke the permit and to institute a collection action against the permit holder by the Attorney General.

(b) Assessments are made in accordance with the following schedule:

(1) Sources emitting at least 100 tons and less than 500 tons per year, two thousand dollars ($2,000) for fiscal year 1991-92 and two thousand five hundred dollars ($2,500) for each year thereafter;

(2) Sources emitting at least 500 tons and less than 1,000 tons per year, four thousand dollars ($4,000) for fiscal year 1991-92 and twelve thousand five hundred dollars ($12,500) for each year thereafter;

(3) Sources emitting at least 1,000 tons and less than 5,000 tons per year, six thousand dollars ($6,000) for fiscal year 1991-92, and twenty-five thousand dollars ($25,000) for each year thereafter; and

(4) Sources emitting at least 5,000 tons per year, six thousand dollars ($6,000) for fiscal year 1991-92, and one hundred thousand dollars ($100,000) for each year thereafter.

(c) Notices of assessment shall not be issued for any fiscal year in which the permit fees for the Title V program adopted by the Commission pursuant to G.S. 143-215.3(a)(1d) are in effect. Should

a Title V program permit fee become due and payable during a fiscal year when the permit holder has paid an assessment, the Title V program permit fee shall be reduced in an amount equal to the pro rata share of the assessment for the months remaining in the fiscal year. The pro rata share is determined by dividing the assessment into 12 equal parts and multiplying that sum by the number of months remaining in the fiscal year."

Sec. 11. G.S. 143-215.3(b) reads as rewritten:

"(b) Research Functions. -- The Department shall have the power to conduct scientific experiments, research, and investigations to discover economical and practical corrective methods for air pollution and waste disposal problems. To this end, the Department may cooperate with any public or private agency or agencies in the conduct of such experiments, research, and investigations, and may, when funds permit, establish research studies in any North Carolina educational institution, with the consent of such institution. In addition, the Department shall have the power to cooperate and enter into contracts with technical divisions of State agencies, institutions and with municipalities, industries, and other persons in the execution of such surveys, studies, and research as it may deem necessary in fulfilling its functions under this ~~Article.~~ Article or Article 21B of this Chapter. All State departments shall advise with and cooperate with the Department on matters of mutual interest."

Sec. 12. (a) There is created the Clean Air Act Advisory Council. The Council shall consist of 11 members as follows:

(1) The Secretary of Environment, Health, and Natural Resources or his designee.
(2) The Commissioner of Agriculture or his designee.
(3) The Chair of the Air Quality Committee of the Environmental Management Commission.
(4) Two representatives of local government.
(5) Three representatives of the environmental and conservation community.
(6) Three representatives of industry.

(b) The Secretary of Environment, Health, and Natural Resources shall appoint the members of the Council specified in subdivisions (4) through (6) of subsection (a) of this section, and shall make appointments to fill vacancies in those positions. At least one of the members appointed by the Secretary shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes and who is knowledgeable in matters relating to air pollution. The Secretary shall designate one member of the Council to serve as Chair.

(c) The Council shall assist the Secretary and the Environmental Management Commission in an advisory capacity on the development of:

(1) All programs necessary to implement the 1990 amendments to the Federal Clean Air Act, including but not limited to changes in existing State air quality statutes, rules, and programs; permitting and implementation procedures; fee programs; regulatory flexibility; and regulation of air toxics.

(2) A permit fee program to finance increased State regulatory activity required under the Federal Clean Air Act.

(d) The Secretary may remove any member of the Council for misfeasance, malfeasance, or nonfeasance. A member who fails to attend three consecutive meetings of the Council shall cease to be a member of the Council.

(e) The Council shall meet upon the call of the Chair. A majority of the Council shall constitute a quorum for the transaction of business.

(f) Any person who is a member of the Council may hold such membership concurrently with and in addition to any other elective or appointive office or offices such person is permitted to hold under G.S. 128-1.1.

(g) Members of the Council who are not State employees shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

(h) All clerical and other services required by the Council shall be supplied by the Department of Environment, Health, and Natural Resources. The Attorney General shall provide legal services required by the Council. All expenses of the Council shall be paid from the nonreverting account established by G.S. 143-215.3A(b).

(i) The Council shall submit written reports as to its findings and recommendations to the Environmental Management Commission and the Environmental Review Commission. The Council may prepare separate reports on issues it selects. The Council shall complete its study and make its final written report on or before 1 May 1992. Upon making its final written report, the Council shall terminate.

(j) Unless deadlines established by the United States Environmental Protection Agency require that rule making be initiated earlier, the Environmental Management Commission may not initiate rule making to implement programs and fees required by Title V of the 1990 amendments to the Federal Clean Air Act (Pub. L. 101-549, 104 Stat. 2635 *et seq.*) until the earlier of 1 May 1992 or the date on which the Environmental Management Commission receives the final written report of the Council.

Sec. 13. The Environmental Review Commission shall study issues relating to reduction of the emission of ozone-depleting chlorofluorocarbons (CFCs) into the atmosphere. The Environmental Review Commission shall report its findings and and recommended legislation to the 1992 Regular Session of the 1991 General Assembly.

Sec. 14. For the 1991-92 fiscal year, notices of assessments pursuant to G.S. 143-215.106A(a), as enacted by Section 10 of this act, shall be issued 30 days after the date this act becomes effective.

Sec. 15. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 574 **CHAPTER 553**

AN ACT TO INCORPORATE THE TOWN OF FOSCOE.

The General Assembly of North Carolina enacts:

Section 1. A Charter for the Town of Foscoe is enacted to read:

"CHARTER OF THE TOWN OF FOSCOE.

"CHAPTER I.

"INCORPORATION AND CORPORATE POWERS.

"Section 1.1. *Incorporation.* The citizens of the area described in Chapter II shall be and constitute a body politic and corporate under the name of 'Town of Foscoe' and shall have all the powers, authority, rights, privileges, and immunities conferred upon municipal corporations by the Constitution and general laws of North Carolina.

"Sec. 1.2. *Powers.* The Town shall have all the powers, duties, rights, privileges and immunities now vested in the Town and now or hereafter granted to municipal corporations by the laws of the State of North Carolina and by this Charter. The Town shall exercise and enjoy all other powers, functions, rights, privileges and immunities necessary or desirable to promote or protect the safety, health, peace, security, good order, comfort, convenience, and general welfare of the Town and of its citizens, unless otherwise prohibited in this Charter.

"CHAPTER II.

"CORPORATE BOUNDARIES.

"Sec. 2.1. Until changed in accordance with law, the boundaries of the Town are:

A 1.71 +/- square mile tract within the Foscoe/Grandfather Community of Watauga River and being briefly described as:

Beginning on the point of intersection of the southern right-of-way (50 feet from the center) of NC 105 with the Avery-Watauga County line; thence northwest with the County line to Parcel #9618; thence

easterly with the lines of Parcels 9618 and 4575 to the northern right of way of 105; thence with the northern R/W of 105 to the point where parcel 4675 leaves the highway; thence leaving the highway and running northeasterly with the lines of Parcels 4675, 1686, 4616, 8565, 9927, 4342, 2319, 7007, 9951, 4567, 3503, and 6566 to the corner of Parcel 6566 in the Town of Seven Devils line; thence southeasterly with the Seven Devils line to NC 105; thence with 105 to the point where Seven Devils leaves the highway; thence leaving the highway and with the Seven Devils lines northwesterly and then northeasterly to the corner of Seven Devils and Parcel 1638; thence northeasterly with the lines of parcels 1638 and 4660 to the corner of Parcel 4060 and 8438 at the old Tweetsie Rail Road bed; thence northeasterly with the old Tweetsie Railroad bed and various tracts in the Devils Den Development to the point where Parcel 0035 leaves the old railroad bed; thence westerly with parcels 1140, 1158, 1330, 1365, 1594, 7363, 6544, 2984, 4844, and 2984 to the northern R/W of NC 105; thence with the highway to the point where Parcel 2984 (Camp Rainbow) leaves the highway; thence leaving the highway and running northerly with parcels 2984 and 7585 to the corner of Parcel 7585 at Clarks Creek Road, NCSR 1136; thence crossing the road and running southeasterly with the lines of Parcel 0389 crossing NC 105 to Watauga River; thence northeasterly down the river to the corner of parcel 0389 and 4281; thence leaving the river and running southwardly with the lines of parcels 4281, 4394, 8395, 9311, 7846, 2651, and 7846 to the point where Parcel 7846 intersects Holloway Mountain Road, NCSR 1559; thence westerly with the road to the point of intersection of Holloway Mountain Road with Church Road, NCSR 1560; thence continuing northwesterly with NCSR 1559, Church Road, to the point where Parcel 1567 leaves the road; thence westwardly with the lines of Parcel 1567 to Watauga River; thence westwardly up the river to the point where Parcel 7254 leaves the river; thence westwardly with the lines of Parcels 7254, 2601, 1463, 7199, 0079, 7216, 7074, 6893, 5025, and 0347 returning to Watauga River; thence southwesterly with the river to the point where Parcel 6980 leaves the river; thence southeasterly with the lines of Parcel 6980 to the corner of Parcel 6980 and 3852; thence westerly with the lines to Parcels 3852, 2212, 9580, 7415, 4543, and 0662 to Watauga River; thence southwesterly up the river to the eastern corner of parcel 4299 at the river; thence leaving the river with the lines of Parcel 4299 northwesterly to the southern R/W of NC 105; thence southwesterly with the southern R/W to the beginning.

Containing 1092 acres more or less (gross). From the above is excepted approximately 17 acres satellite annexed by the Town of

Seven Devils in the vicinity of NC 105 and Seven Devils Road, NCSR 1151.

"CHAPTER III.
"GOVERNING BODY.

"Sec. 3.1. *Number of Members.* The governing body shall consist of five members called aldermen.

"Sec. 3.2. *Manner of Election of Aldermen.* The qualified voters of the entire Town of Foscoe shall elect the aldermen.

"Sec. 3.3. *Term of Office of Aldermen.* Five aldermen are to be elected at the regular Town election in November of 1991. The three persons who receive the highest number of votes shall serve a four-year term, and the two persons receiving the next highest number of votes shall serve a two-year term. The terms will continue to be staggered, with ensuing aldermen being elected for four-year terms. Only residents and qualified voters are eligible to be a candidate or be elected an alderman or serve in such capacity.

"Sec. 3.4. A mayor will be selected from the Board of Aldermen by the Board of Aldermen whose duties will be those provided by law.

"Sec. 3.5. *Recall.* Any member of the Board of Aldermen may be removed from office in the following manner:

(1) Any elector of the Town may make and file with the Town Clerk an affidavit containing the name of the alderman whose removal is sought and a statement of the grounds alleged for his removal. The Clerk shall thereupon deliver to the elector making such affidavit copies of petition blanks for demanding such a removal, printed forms of which shall be kept on hand. Such blanks shall be issued by the Clerk with the Clerk's signature thereto attached and shall be dated and addressed to the Board of Aldermen, indicating the person to whom issued and stating the name of the officer whose removal is sought. A copy of the petition shall be entered in a record book kept for that purpose in the office of the Clerk. A recall petition to be effective must be returned and filed with the Clerk within 30 days after the filing of the affidavit and to be sufficient must bear the signature of at least thirty-three percent (33%) of the registered voters of the Town as shown by the registration records for the last preceding general municipal election.

(2) If a recall petition shall be certified by the Clerk to be sufficient, the Clerk shall at once submit it to the Board of Aldermen with certification to that effect and shall notify the officer whose removal is sought of such action. If the officer whose removal is sought does not resign within five days after such notice the Board of Aldermen shall

thereupon order and fix a day for holding a recall election. Any such election shall be held not less than 70 nor more than 100 days after the petition has been certified to the Board of Aldermen, and it may be held at the same time as any other general or special election within such period; but if no other election is to be held within such period the Board of Aldermen shall call a special recall election to be held within the time aforesaid.

(3) The question of recalling any number of officers may be submitted at the same election, but as to each such officer a separate petition shall be filed and there shall be an entirely separate ballot.

(4) The ballots used in a recall election shall submit the following propositions in the order indicated:

a. For the recall of (name of officer).

b. Against the recall of (name of officer).

Except that the spaces left for the name and date shall be filled by the correct name and date, the ballots used in a recall election shall be in form substantially as follows:

'RECALL ELECTION

Town of Foscoe

_____ (Month and day of month) ____19_

[ ] For the recall of _____

[ ] Against the recall of _____'.

(5) If a majority of the votes cast on the question of recalling an officer are not for such recall, the person shall continue in office for the remainder of the unexpired term, but subject to the recall as before. If a majority of such votes be for the recall of the officer designated on the ballot, the person shall, regardless of any defects in the recall petition, be deemed removed from office.

(6) If an officer in regard to whom a sufficient recall petition is submitted to the Board of Aldermen shall resign before the election, or be removed as a result thereof, the vacancy so caused shall be filled in the manner provided by this Charter for filling vacancies in such office, except as provided in subdivision (8) of this section. An officer removed by the voters as the result of a recall election or resigning after a sufficient petition for his recall has been submitted to the Board of Aldermen, shall not be reelected to fill the vacancy caused by his own removal or resignation.

(7) No recall petition shall be filed against an officer within three months after he takes office, during the last four months of his term, nor, in the case of an officer subjected

to a recall election and not removed thereby, until at least six months after that election.

(8) If the recall of a majority of the members of the Board of Aldermen shall be effected at a single recall election, the successors of the officers recalled shall be elected by the registered, qualified voters of the Town at a special municipal election and said successors shall serve for the unexpired part of the terms of the officers recalled. The members of the Board of Aldermen who have not been recalled may call said special election and make all necessary provisions regarding the same in conformity to the Constitution and general laws of North Carolina. If the recall of all of the members of the Board of Aldermen shall be effected at a single recall election, they shall be continued in office for the purpose, and only for the purpose, of calling a special municipal election for the election of their successors as above provided, and of ascertaining and declaring the result thereof.

"Sec. 3.6. *Pay for Aldermen.* The aldermen shall receive no pay.

"CHAPTER IV.

"ELECTIONS.

"Sec. 4.1. *Conduct of Town Elections.* The Town officers shall be elected on a nonpartisan basis, and the results determined by plurality as provided in G.S. 163-292. Elections shall be conducted by the Watauga County Board of Elections.

"Sec. 4.2. *Interim Budget.* The Board of Aldermen may adopt a budget ordinance for the 1991-92 fiscal year, following their qualifications for office, without having to comply with the budget preparation and adoption timetable set out in the Local Government Budget and Fiscal Control Act. If the initial budget is adopted after July 1, 1991, then taxes may be paid at par or face amount within 90 days of adoption of the budget, and thereafter according to the schedule in G.S. 105-360 as if the taxes had been due on September 1, 1991.

"Sec. 4.3. *Initial Board.* Until the organizational meeting of the Board of Aldermen after the 1991 municipal election, Tom Foxx, David Taylor, Clarence Berry, Dan Klink, and Nancy Chamblin are appointed as members of the Board of Aldermen.

"CHAPTER V.

"ADMINISTRATION.

"Sec. 5.1. The Town of Foscoe shall operate under the mayor-council plan as provided in Part 3 of Article 7 of Chapter 160A of the General Statutes."

Sec. 2. (a) The Watauga County Board of Elections shall conduct an election on a date set by it, to be not less than 60 nor more than 120 days after the date of ratification of this act, for the purpose of submission to the qualified voters of the area described in Sec. 2.1 of the Charter of the Town of Foscoe, the question of whether or not such area shall be incorporated as the Town of Foscoe. Registration for the election shall be conducted in accordance with G.S. 163-288.2. The Watauga County Board of Elections shall provide for absentee voting on the referendum on the incorporation of the Town of Foscoe.

(b) In the election, the questions on the ballot shall be:

'[ ] FOR incorporation of the Town of Foscoe

[ ] AGAINST incorporation of the Town of Foscoe'.

Sec. 3. In such election, if a majority of the votes are cast 'FOR incorporation of the Town of Foscoe,' this Charter shall become effective on the date that the Watauga County Board of Elections determines the result of the election. Otherwise, Section 1 of this act shall have no force and effect.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 621 **CHAPTER 554**

AN ACT TO MODIFY THE REQUIREMENTS FOR CONTINUING EDUCATION OF INSURANCE LICENSEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-130 reads as rewritten:

"*§ 58-33-130. Continuing education program for licensees.*

(a) The Commissioner ~~is authorized to promulgate~~ may adopt rules to provide for a program of continuing education requirements for the purpose of enhancing the professional competence and professional responsibility of adjusters and motor vehicle damage appraisers. ~~Such~~ The rules may include criteria for:

(1) The content of continuing education courses;
(2) Accreditation of continuing education sponsors and programs;
(3) Accreditation of videotape or other audiovisual programs;
(4) Computation of credit;
(5) Special cases and exemptions;
(6) General compliance procedures; and
(7) Sanctions for noncompliance.

(b) The Commissioner ~~is authorized to~~ may adopt rules to provide for the continuing professional education of all agents and brokers, including fraternal field marketers, but excluding limited field representatives. In ~~promulgating such~~ adopting the rules, the Commissioner may use the same criteria as specified in subsection (a) of this ~~section.~~ section and shall provide that agents holding more than one license under G.S. 58-33-25(c) are required to complete no more than 18 credit hours per year.

(c) On and after January 1, 1992, any individual agent or broker desiring to renew an appointment or license shall offer evidence satisfactory to the Commissioner that he has complied with the continuing professional education requirements approved by the Commissioner.

(d) Annual continuing professional education hour requirements shall be determined by the Commissioner, but shall not be more than 12 credit hours.

(e) No more than seventy-five percent (75%) of the requirement relating to life or health insurance agents or brokers may be met by taking courses offered by licensed life or health insurance companies with which those agents or brokers have appointments.

(f) The Commissioner may adopt rules for waiving the requirements under this section for cases of certified physical incapacity or illness or undue hardship.

(g) The Commissioner shall permit any licensee to carry over to a subsequent calendar year up to seventy-five percent (75%) of the required annual hours of continuing professional education.

(h) Any licensee who offers evidence satisfactory to the Commissioner on forms ~~supplied~~ prescribed by the Commissioner that he has satisfactorily completed the required continuing professional education courses shall be deemed to have complied with this section.

(i) The Commissioner is authorized to approve continuing professional education courses.

(j) The Commissioner is authorized to establish fees to be paid to the Commissioner by licensees who are required to comply with this section or by course vendors for the purpose of offsetting the cost of additional staff and resources to administer the program authorized by this section. To assure continued and proper administration of the program, any unexpended revenue from the fees shall not revert to the General Fund.

(k) ~~In addition to the 12 annual credit hours required of life or health insurance agents or brokers, in order to~~ To renew an appointment or license on and after January 1, 1993, every person holding a supplemental license under G.S. 58-33-25(d2) shall satisfactorily complete two annual credit hours in course instruction

covering the principles of Medicare supplement and long-term care insurance, including changes in federal or North Carolina law relating to such insurance. ~~Such additional two hours are~~ The two-hour course instruction requirement is not subject to the limitation in subsection (e) of this ~~section.~~ section and shall be included in the credit hour requirements in subsections (b) and (d) of this section for those persons."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 726 **CHAPTER 555**

AN ACT TO MODIFY THE CONDITIONS ON USE OF PROCEEDS OF A GOLDSBORO OCCUPANCY TAX AND TO RAISE THE FORCE ACCOUNT CONSTRUCTION LIMIT FOR CERTAIN STORM DRAINAGE PROJECTS IN GOLDSBORO.

The General Assembly of North Carolina enacts:

Section 1. Chapter 929 of the 1985 Session Laws, as amended by Chapters 172 and 319 of the 1987 Session Laws, is further amended by repealing all references to the City of Goldsboro.

Sec. 2. Levy of Tax. The City of Goldsboro may by resolution, after not less than 10 days public notice and after a public hearing held pursuant thereto, levy a room occupancy and tourism development tax. Collection of the tax, and liability, therefore, shall begin and continue only on and after the first day of a calendar month set in the resolution levying the tax, which in no case may be earlier than the first day of the second succeeding calendar month after the date of adoption of the resolution.

Sec. 3. Rate; Scope. The room occupancy and tourism development tax that may be levied under this act shall not be less than three percent (3%) nor more than five percent (5%) of the gross receipts derived from the rental of any room, lodging, or similar accommodation furnished by any hotel, motel, inn, tourist camp, or other similar place within the levying unit now subject to the three percent (3%) sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax.

Sec. 4. Exemptions. The tax authorized by this act does not apply to gross receipts derived by the following entities from accommodations furnished by them:

(1) Religious organizations;
(2) A business that offers to rent fewer than five units;
(3) Educational organizations;

(4) Summer camps; and

(5) Charitable, benevolent, and other nonprofit organizations.

Sec. 5. Administration of Tax. (a) A tax levied under this act is due and payable to the city in monthly installments on or before the twenty-fifth day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the twenty-fifth day of each month, prepare and render a return on a form prescribed by the city. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied. A return filed under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(b) Any person, firm, corporation, or association who fails or refuses to file the return required by this act shall pay a penalty of fifty dollars ($50.00) for each day's omission as provided under G.S. 160A-175.

(c) Any person who willfully attempts in any manner to evade the occupancy tax imposed by this act or to make a return or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

Sec. 6. Collection of Tax. Every operator of a business subject to the tax levied by this act shall, on and after the effective date of the tax, collect the tax. The tax shall be collected as part of the charge for the furnishing of any taxable accommodations. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the governing bodies. The room occupancy tax levied pursuant to this act shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The city shall design, print, and furnish to all appropriate businesses in the city the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Sec. 7. Disposition of Taxes Collected. (a) Feasibility Study. After levying a tax under this act, the City of Goldsboro shall place the net proceeds of the tax in a special fund. "Net proceeds" means gross proceeds less the cost to the city of collecting and administering the tax. When sufficient proceeds have been accumulated in the special fund, the city council shall create a citizens' advisory committee to conduct a study of the feasibility of the construction of a civic center in Goldsboro. The citizens' advisory committee shall be composed of either five or seven members, as determined by the city council. If the committee is composed of five members, three shall be appointed

by the city council and two shall be appointed by the Chamber of Commerce of Wayne County. If the committee is composed of seven members, four shall be appointed by the city council and three shall be appointed by the Chamber of Commerce of Wayne County. The citizens' advisory committee shall use the net proceeds of the tax levied under this act for a study of the feasibility of the construction of a civic center in Goldsboro.

(b) If Civic Center Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall continue to serve in an advisory capacity to the Goldsboro City Council. The city shall use no more than twenty percent (20%) of the net proceeds of the tax levied under this act for development of tourism, support services, and tourist-related events and attractions. The city shall use the remainder of the net proceeds for improving, leasing, constructing, financing, operating, or acquiring facilities and properties as needed to provide for a civic center facility for Goldsboro. The city may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this subsection.

(c) If Civic Center Not Feasible at Present. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city at present or without the participation of other governmental, educational, or nonprofit entities, then the city may, on a monthly basis, remit up to fifty percent (50%) of the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The remaining net proceeds of the tax shall be invested in a special interest bearing fund and held by the city for improving, leasing, constructing, financing, operating, or acquiring facilities and properties, either by the city or in conjunction with other governmental, educational, or nonprofit entities. Thereafter, if the Goldsboro City Council determines that a civic center would be a viable alternative for the city, then a citizens' advisory committee shall be again created, if it has been disbanded, pursuant to subsection (a) of this section, and the provisions of subsection (b) of this section shall apply. Further, the citizens' advisory committee may conduct additional feasibility studies as it deems necessary. If the Goldsboro City Council later determines that a civic center would not be a viable alternative for the city, then the provisions of subsection (d) of this section shall apply.

(d) If Civic Center Not Feasible. If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic

center would not be a viable alternative for the city, the proceeds of the tax levied under this act shall thereafter be used as provided in this subsection. The citizens' advisory committee created pursuant to subsection (a) of this section shall be disbanded. The city shall, on a monthly basis, remit the net proceeds of the tax to the Goldsboro Tourism Council created in Section 8 of this act. The Council shall use the proceeds to develop tourism, support services, and tourist-related events, and for any other appropriate activities to provide tourism-related facilities and attractions.

Sec. 8. Goldsboro Tourism Council. (a) If the Goldsboro City Council determines that the results of the feasibility study indicate that a civic center would not be a viable alternative for the city, as provided in Section 7, it shall adopt a resolution creating a Goldsboro Tourism Council. The membership of the Goldsboro Tourism Council shall be appointed by the Goldsboro City Council as follows:

(1) Three owners or operators of hotels, motels, or other taxable accommodations in the City of Goldsboro.

(2) Three individuals who have demonstrated an interest in conventions and tourism development in the Goldsboro area, and who do not own or operate hotels, motels, or other taxable tourism accommodations.

(3) Three ex officio members: the city manager, the executive vice-president of the Chamber of Commerce of Wayne County, and the mayor of the City of Goldsboro.

(b) All members of the Council shall serve without compensation. Travel expenses, as approved in the annual budget, may be provided by the Goldsboro Tourism Council. Vacancies in the Council shall be filled in the same manner as the original appointments. Members appointed to fill vacancies shall serve for the remainder of the unexpired term for which they are appointed to fill. Members shall serve three-year terms which will be staggered as provided by the city council; members may serve no more than two consecutive three-year terms. The members shall elect a chairperson and treasurer, who shall serve for a term of two years. The Council shall meet at the call of the chairperson and shall adopt rules of procedure to govern its meeting as provided by Robert's Rules of Order.

(c) The Goldsboro Tourism Council may contract with any person, firm, or agency to assist it in carrying out the purposes provided in this act. The Council shall prepare an annual budget and shall report quarterly and at the close of the fiscal year to the Goldsboro City Council on its receipts and expenditures for the preceding quarter and year in such detail as the city may require. An audit will be conducted as part of the city's audit contract.

Sec. 9. Repeal. A tax levied under this section may be repealed by a resolution adopted by the Goldsboro City Council. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 10. Force Account Modification.

(a) G.S. 143-135 reads as rewritten:

"§ *143-135. Limitation of application of Article.*

Except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials or equipment, this Article shall not apply to construction or repair work undertaken by the State or by subdivisions of the State of North Carolina (i) when the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned and (ii) when the total cost of the project, including without limitation all direct and indirect costs of labor, services, materials, supplies and equipment, does not exceed seventy-five thousand dollars ($75,000). In addition, except for the provisions of G.S. 143-129 requiring bids for the purchase of apparatus, supplies, materials, or equipment, this Article shall not apply to work undertaken by the City of Goldsboro to enclose or encase an open storm drainage ditch when (i) the work is performed by duly elected officers or agents using force account qualified labor on the permanent payroll of the agency concerned, (ii) the total cost of the materials for the project does not exceed one hundred thousand dollars ($100,000) per drainage ditch, and (iii) the total remaining cost of the project, including without limitation all direct and indirect costs of labor and services, does not exceed seventy-five thousand dollars ($75,000). Such force account work shall be subject to the approval of the Director of the Budget in the case of State agencies, of the responsible commission, council, or board in the case of subdivisions of the State. Complete and accurate records of the entire cost of such work, including without limitation, all direct and indirect costs of labor, services, materials, supplies and equipment performed and furnished in the prosecution and completion thereof, shall be maintained by such agency, commission, council or board for the inspection by the general public. Construction or repair work undertaken pursuant to this section shall not be divided for the purposes of evading the provisions of this Article."

(b) This section applies only to the City of Goldsboro.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 756 **CHAPTER 556**

AN ACT TO EXTEND THE CORPORATE LIMITS OF THE CITY OF DUNN.

The General Assembly of North Carolina enacts:

Section 1. The corporate limits of the City of Dunn are extended to include the following described property:

BEGINNING at a point where the Southern R/W margin of West Bay Street intersects with the Western R/W margin of General Lee Avenue, said point being a Northeast corner of Roy Yeatman; thence running with the Southern R/W margin of West Bay Street and a Northern line of Roy Yeatman, South 51 degrees 00 minutes East, 40.00 feet to a point on said Southern R/W margin of West Bay Street; thence leaving said R/W margin and running along common lines with Roy Yeatman, South 39 degrees 00 minutes West, 150.00 feet to a point; thence South 51 degrees 00 minutes East, 150.00 feet to a point; thence South 39 degrees 00 minutes West, 100.00 feet to a point; thence South 51 degrees 00 minutes East, 150.00 feet to a point on the Western R/W margin of Orange Avenue; thence continuing to run with Yeatman and with the Western R/W margin of Orange Avenue, South 39 degrees 00 minutes West, 1023.47 feet to a point, said point being at the intersection of the Western R/W margin of Orange Avenue and the Northern R/W margin of a road in Greenwood Cemetery; thence running with said road in the cemetery and continuing to run with Roy Yeatman, North 88 degrees 20 minutes 04 seconds West, 457.94 feet to a point on the R/W margin of said road, said point being a common corner with Roy Yeatman and the Southeast corner of a lot owned by the City of Dunn, 512/66; thence leaving said road of Greenwood Cemetery and running along common lines with Yeatman and the City of Dunn, North 01 degrees 39 minutes 56 seconds East, 100.00 feet to a point; thence North 88 degrees 20 minutes 04 seconds West, 100.00 feet to a point; thence South 01 degrees 39 minutes 56 seconds West, 100.00 feet to a point, said point being the Southwest corner of the aforesaid City of Dunn's lot and said point also being a point on the Northern R/W margin of aforesaid road in Greenwood Cemetery; thence continuing to run with Yeatman and said road of Greenwood Cemetery, North 88 degrees 20 minutes 04 seconds West, 309.06 feet to a point on the R/W margin of said road, said point being the Northeast corner of another lot owned by the City of Dunn, 630/862; thence running with the City of

Dunn's lot and continuing to run with Roy Yeatman, North 88 degrees 14 minutes 17 seconds West, 223.92 feet to a point; thence South 01 degrees 45 minutes 43 seconds West, approximately 342.25 feet to a point on the Northern R/W margin of Susan Tart Road, said point being the Southwest corner of the aforesaid City of Dunn's lot; thence continuing to run with Yeatman and running with the Northern R/W margin of Susan Tart Road, North 65 degrees 49 minutes 39 seconds West, approximately 402.48 feet to a point on said R/W margin; thence continuing to run with said R/W margin and Roy Yeatman, North 65 degrees 18 minutes 05 seconds West, 731.30 feet to a point on said R/W margin, said point being the Southwest corner of Roy Yeatman and the Southeast corner of Casper Tart, Jr.,330/383; thence continuing to run along said Northern R/W margin of Susan Tart Road and running with Casper Tart, Jr., the following courses and distances: North 65 degrees 12 minutes 20 seconds West, 275.33 feet; thence North 67 degrees 45 minutes 55 seconds West, 114.26 feet; thence North 70 degrees 33 minutes 30 seconds West, 166.20 feet; thence North 74 degrees 43 minutes 23 seconds West, 118.83 feet; thence North 79 degrees 56 minutes 21 seconds West, 116.91 feet; thence North 82 degrees 28 minutes 29 seconds West, 215.01 feet to a point where the Northern R/W margin of Susan Tart Road intersects with the Eastern R/W margin of Tilghman Drive and being the Southwest corner of Casper Tart, Jr.; thence running with the Eastern R/W margin of Tilghman Drive and running along a common line with Casper Tart, Jr., P. K. Vyas, M.D., 894/890, Laksman Rao, M.D., 894/890 and with another lot of Casper Tart, Jr., 330/383, North 01 degrees 58 minutes 42 seconds East, 1030.69 feet to a point on the Eastern R/W margin of Tilghman Drive, said point being a point in the Western line of Casper Tart, Jr.; thence continuing to run with the Eastern R/W margin of Tilghman Drive and Casper Tart, Jr., the following approximate courses and distance: North 12 degrees 55 minutes East, 50 feet; thence North 19 degrees 30 minutes East, 50 feet; thence North 20 degrees 20 minutes East, 70 feet; thence North 13 degrees 50 minutes East, 80 feet; thence North 7 degrees 10 minutes East, 50 feet to a point on said Eastern R/W margin of Tilghman Drive and a point in the Western line of Casper Tart, Jr.; thence continuing to run with Casper Tart, Jr. and the Eastern R/W margin of Tilghman Drive, passing through the Southwest corner of Alsey B. Johnson, 337/8, and running with Johnson's Western property line, approximately North 01 degrees 50 minutes East, approximately 220 feet to a point on said R/W margin and a point in the Western line of Johnson; thence continuing to run with Johnson and the Eastern R/W margin of Tilghman Drive, approximately North 06 degrees 35 minutes East, approximately 480

feet to a point on said R/W margin; thence continuing with said R/W margin and Johnson, approximately North 01 degrees 50 minutes East, approximately 65 feet to a point on said Eastern R/W margin of Tilghman Drive, said point being the Northwest corner of Alsey B. Johnson and the Southwest corner of Pete Skinner; thence crossing Tilghman Drive, a 60' R/W road, and running along the Northern property line of Hubert Warren, 597/79, and the Southern property line of Pete Skinnner, North 88 degrees 39 minutes West, approximately 192.81 feet to a point in the line of Skinner and the Northwest corner of Warren, said point also being the Easternmost corner of Jesse B Lee, 290/402 and a point in Fish Pond Branch; thence running along a common line with Warren, Jesse B. Lee, and along Fish Pond Branch, South 25 degrees 48 minutes West, 199.97 feet to a point in Warren's Westernmost property line; thence continuing to run with Warren and Lee along Fish Pond Branch, crossing the Northwest corner of Sandhill Apartments and running with said Apartments, South 28 degrees 18 minutes West, 167.97 feet to a point in the Western property line of Sandhill Apartments and the Southern property line of Jesse B. Lee and a point in Fish Pond Branch; thence continuing to run along Fish Pond Branch and along a common line with Sandhill Apartments and Jesse B. Lee, the following courses and distances: South 58 degrees 48 minutes West, 99.99 feet; thence South 84 degrees 18 minutes West, 126.01 feet; thence South 46 degrees 18 minutes West, 164.99 feet; thence South 35 degrees 43 minutes West, 314.94 feet to a point in Fish Pond Branch, said point being the Southwest corner of Sandhill Apartments and a point in the Southern property line of Betty Wooten, N/F, said point also being the Northwest corner of Betsy Johnson Hospital; thence continuing to run with Fish Pond Branch, the Southern property line of Wooten and the Western property line of Betsy Johnson Hospital, South 49 degrees 25 minutes West, 206.00 feet to a point; thence South 66 degrees 40 minutes West, approximately 120 feet to a point in the Western property line of Betsy Johnson Hospital and a Southern corner of Betty Wooten, N/F; thence leaving Fish Pond Branch and running with the Western property line of Wooten, N/F and the Eastern lot line of lots located on the East side of Bruce Drive, approximately North 0 degrees 22 minutes 01 seconds West, approximately 1728.50 feet to a point; thence running across the properties of Betty Wooten, N/F, Jesse B. Lee, 290/402, and Casper Tart, 298/121, and along the Southern Property line of Belvin L. Strickland, across the property of Skinner, North 87 degrees 51 minutes East, approximately 1077.32 feet to a point on the Western R/W margin of Tilgham Drive; thence running along the Western R/W margin of Tilghman Drive, South 2 degrees 14 minutes East,

19.39 feet to another point on said R/W margin; thence crossing Tilghman Drive, a 60' R/W road, and running across the property of Skinner and then along the Southern lot line of Lockamy Radiator Shop, North 87 degrees 44 minutes East, 776.10 feet to the Southeast corner of Lockamy Radiator Shop and a point in the Western property line of Albert Manor, said point also being the Northeast corner of Skinner; thence running along common lines with Skinner and Maynor, South 08 degrees 04 minutes East, 59.34 feet to a point; thence South 05 degrees 03 minutes East, 222.17 feet to a point; thence South 79 degrees 29 minutes East, 120.02 feet to a point, said point being a point in the line of Dunn Housing Authority, 577/152, the Southeast corner of Maynor and an Eastern corner of Skinner; thence running along a common line with the Dunn Housing Authority and Skinner, South 0 degrees 12 minutes East, 274.14 feet to a point in Skinner's Eastern property line, said point being the Southwest corner of Dunn Housing Authority; thence running along a common line with the Southern property line of Dunn Housing Authority and the Shell Property, North 88 degrees 39 minutes 30 seconds East, 470.00 feet to the Southeast corner of Dunn Housing Authority and a Western corner of the Shell Property; thence running along the Eastern property line of Dunn Housing Authority, another common line with the Shell Property, North 0 degrees 12 minutes 15 seconds West, 257.50 feet to a point; thence continuing to run wit said properties, passing through Dunn Housing Authority's Northwestern corner, North 8 degrees 24 minutes 20 seconds West, approximately 222.77 feet to a point on the Southern property line of Woodlawn Subdivision Section 4, Map Book 6, Page 172; thence running along a common line with the Southern property line of Woodlawn Subdivision Section 4 and the Northern property line of the Shell Property, North 82 degrees 28 minutes East, 176.23 feet to the Southeast corner of Woodlawn Subdivision Section 4 and a Northern corner of the Shell Property; thence running along another common line with the Shell Property and the Eastern line of Woodlawn Subdivision Section 4, North 0 degrees 30 minutes East, 18.27 feet to a point in the Eastern line of Woodlawn Subdivision Section 4, said point also being the Southwest corner of Woodlawn Subdivision Section 3 and another Northern corner of the Shell Property; thence running along a common line with the Shell Property and the Southern line of Woodlawn Subdivision Section 3, North 82 degrees 47 minutes East, 533.51 feet to the Southeast corner of Woodlawn Subdivision Section 3, the Northeast corner of the Shell Property and a point in the Western line of Woodlawn Subdivision Section 6; thence running along a common line with the Western line of Woodlawn Subdivision Section 6 and the Eastern line of the Shell

Property, South 10 degrees 00 minutes 35 seconds West, approximately 653.20 feet to a point, said point being the Southeast corner of the Shell Property, the Southwest corner of Woodlawn Subdivision Section 6 and a point in the Northern property line of Marvin J. Johnson, 448/489; thence running along the Southern property line of Woodlawn Subdivision Section 6 and the Northern property line of Marvin J. Johnson, North 88 degrees 09 minutes 30 seconds East, approximately 185.82 feet to a point, said point being the Northernmost corner of Canterbury and the Northeast corner of Marvin J. Johnson; thence running along common lines with Johnson and Lots 3 and 4, Canterbury, South 38 degrees 30 minutes 05 seconds West, 356.81 feet to the Southwest corner of Lot 4 and the Eastern corner of Johnson; thence continuing to run with Johnson and Lots 4, 5, 6 and 7, Canterbury, South 51 degrees 29 minutes, 55 seconds East, 432.05 feet to a point in the Southern lot line of Lot 7, the Northernmost corner of Lot 9 and an Eastern corner of Johnson; thence continuing with Johnson and running along a common line with Lot 9, Canterbury, South 00 degrees 35 minutes 34 seconds East, 432.05 feet to the Southernmost corner of Lot 9, said point being a point in the Northern lot line of Lot 38 and another Eastern corner of Johnson; thence running along the Northern lot line of Lot 38 and with Johnson, South 84 degrees 19 minutes 02 seconds West, 165.31 feet to a point, said point being in the Southern property line of Marvin J. Johnson, the Northwest corner of Lot 38, Canterbury and the Northernmost corner of Roy Yeatman; thence running along a common line with Yeatman and Lot 38, Canterbury, South 05 degrees 40 minutes 58 seconds East, 150.00 feet to a point on the Northern R/W margin of Cambridge Court, the Southwest corner of Lot 38, Canterbury; thence continuing with Yeatman, crossing Cambridge Court, South 3 degrees 45 minutes 19 seconds West, 60.74 feet to the Northwest corner of Lot 37, Canterbury; thence continuing to run with Yeatman along a common line with Lot 37, Canterbury, South 05 degrees 40 minutes 58 seconds East, 155.00 feet to the Southwest corner of Lot 37, Canterbury; thence continuing to run with Yeatman and crossing Canterbury Drive, North 32 degrees 36 minutes 58 seconds West, 166.97 feet to the Westernmost corner of Lot 32, Canterbury; thence continuing with Yeatman and running along the Southern lot lines of Lots 32, 33, 34, 35, and 36, Canterbury, South 50 degrees 52 minutes 39 seconds East, 711.50 feet to a point on the Northern R/W margin of Kingsway Drive, said point being the Southernmost corner of Lot 36, Canterbury; thence continuing with Yeatman, crossing Kingsway Drive, South 32 degrees 38 minutes 48 seconds East, 60.21 feet to the Northwest corner of Lot 20, Canterbury; thence continuing with Yeatman and running along the

Western lot lines of Lot 20, South 23 degrees 27 minutes 09 seconds East, 264.56 feet to the Southwest corner of Lot 20, Canterbury; thence continuing to run with Yeatman and running along the Southern lot lines of Lots 20, 19, 18, and 17, Canterbury, the following courses and distances along the run of a branch; North 73 degrees 49 minutes 16 seconds East, 160.00 feet; thence North 42 degrees 11 minutes 17 seconds East, 140.82 feet; thence North 00 degrees 46 minutes 01 seconds East, 394.58 feet; thence North 58 degrees 20 minutes 03 seconds East, 226.17 feet; thence North 27 degrees 00 minutes 24 seconds East, 118.30 feet to a point, said point being the Northeast corner of Lot 17, Canterbury and the Easternmost corner of Lot 16, Canterbury and also a point in the Southern lot line of R. V. T. Enterprises, Inc.; thence running along a common line with Yeatman and R. V. T. Enterprises, Inc., South 50 degrees 52 minutes 39 seconds East, 9.94 feet to a point; thence continuing with Yeatman and R. V. T. Enterprises, Inc., North 25 degrees 20 minutes 27 seconds East, 54.26 feet to a point, said point being the Southwest corner of Warren C. Humphrey, 804/689 and a Northern corner of Yeatman; thence running with Yeatman and Humphrey, South 51 degrees 00 minutes East, 154.00 feet to a point on the Western R/W margin of General Lee Avenue, said point also being the Southeast corner of Humphrey and another Northern corner of Yeatman; thence continuing with Yeatman and running with the Western R/W margin of General Lee Avenue, South 39 degrees 00 minutes West, 40.00 feet to the POINT OF BEGINNING.

Sec. 2. This act becomes effective June 30, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 789 **CHAPTER 557**

AN ACT TO REVISE AND CONSOLIDATE THE CHARTER OF THE CITY OF GASTONIA.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Gastonia is revised and consolidated to read:

"THE CHARTER OF THE CITY OF GASTONIA.

"ARTICLE I. INCORPORATION, CORPORATE POWERS, AND BOUNDARIES.

"Section 1.1. *Incorporation.* The City of Gastonia, North Carolina in Gaston County and its inhabitants shall continue to be a municipal body politic and corporate, under the name of the 'City of Gastonia,' hereinafter also referred to as the 'City.'

"Sec. 1.2. *Powers.* The City has and may exercise all of the powers, duties, rights, privileges, and immunities conferred upon the City of Gastonia specifically by this Charter or upon municipal corporations by general law. The term 'general law' is employed herein as defined in G.S. 160A-1.

"Sec. 1.3. *Corporate Limits.* The corporate limits are those existing at the time of ratification of this Charter, as set forth on the official map of the City and as they may be altered from time to time in accordance with law. An official map of the City, showing the current boundaries, is maintained permanently in the office of the City Clerk and is available for public inspection. Within a reasonable time upon alteration of the corporate limits made pursuant to law, the appropriate changes to the official map shall be made and copies of the changes shall be filed in the office of the Secretary of State, the Gaston County Register of Deeds, and the appropriate board of elections.

"ARTICLE II. GOVERNING BODY.

"Sec. 2.1. *Mayor and City Council.* The Mayor and the City Council comprise the governing body of the City. The City Council is referred to hereinafter as the 'Council.'

"Sec. 2.2. *City Council Composition; Terms of Office.* The Council is composed of six members who reside in the respective wards as provided in Article III of this Charter, but who are elected by all the qualified voters of the City for terms of four years or until their successors are elected and qualified.

"Sec. 2.3. *Mayor; Term of Office; Duties.* The Mayor is elected by all the qualified voters of the City for a term of two years or until a successor is elected and qualified. The Mayor is the official head of the City government and presides at meetings of the Council, has the right to vote on all matters before the Council, but is not required to vote except when the Mayor's vote is necessary for determinative action. The Mayor exercises powers and duties conferred by law or as directed by the Council. Failure of the Mayor to vote when present, or when the Mayor has not been excused, on any such matters when the Mayor's vote is required by this section, is deemed an affirmative vote and shall be so recorded.

"Sec. 2.4. *Mayor Pro Tempore.* The Council shall elect one of its members as Mayor Pro Tempore to perform the duties of the Mayor during the Mayor's absence or disability, in accordance with general law. The Mayor Pro Tempore shall serve in such capacity at the pleasure of the other members of the Council.

"Sec. 2.5. *Meetings.* In accordance with general law, the Council shall establish a suitable time and place for its regular meetings.

Special and emergency meetings may be held as provided by general law.

"Sec. 2.6. *Voting Requirements; Quorum.* Unless otherwise stated herein, official actions of the Council and all votes are taken in accordance with the applicable provisions of general law, particularly G.S. 160A-75. Voting on zoning matters subject to a protest petition is as provided in Section 9.4. A quorum is as provided in G.S. 160A-74.

"Sec. 2.7. *Compensation; Qualifications for Office; Vacancies.* The compensation and qualifications of the Mayor and Council are in accordance with general law. Vacancies that occur in any elective office of the City are filled as provided in G.S. 160A-63.

"ARTICLE III. ELECTIONS.

"Sec. 3.1. *Regular Municipal Elections.* Regular municipal elections shall be held in each odd-numbered year in accordance with the uniform municipal election laws of North Carolina. Elections are conducted on a nonpartisan basis and the results determined using the nonpartisan plurality method as provided in G.S. 163-292. For purpose of election of Council members, the City is divided into six geographical subdivisions known as wards, provided that all qualified voters of the City may cast a vote for each seat. The wards are numbered from one to six, and are as shown on the existing official map of the City or of the election wards, as they may be revised from time to time.

"Sec. 3.2. *Election of Council.* With the exception of elections to fill vacancies under G.S. 160A-63, all Council members elected shall serve for terms of four years. Each Council member shall be a resident of the ward he or she represents.

"Sec. 3.3. *Election of Mayor.* A Mayor shall be elected in each regular municipal election.

"Sec. 3.4. *Special Elections and Referendums.* Special elections and referendums may be held only as provided by general law or applicable local acts of the General Assembly.

"ARTICLE IV. ORGANIZATION AND ADMINISTRATION, CITY MANAGER.

"Sec. 4.1. *Form of Government.* The City operates under the council-manager form of government, in accordance with Part 2 of Article 7 of Chapter 160A of the General Statutes.

"Sec. 4.2. *City Manager.* The Council appoints a City Manager who is responsible for the administration of all departments of the City government. The City Manager has all the powers and duties conferred by general law, except as expressly limited by the provisions of this Charter, and the additional powers and duties conferred by the Council, so far as authorized by general law.

"Sec. 4.3. *Approval and Execution of Contracts.* The Council may adopt an ordinance that delegates to the City Manager the authority to award, approve, and execute certain contracts on behalf of the City. This authority of the City Manager to award, approve, and execute certain contracts shall be subject to the terms, conditions, and limitations as set forth by the Council in the ordinance, and the ordinance shall require that all contracts awarded, approved, and executed pursuant to that authority be reported by the City Manager to the Council in a timely manner. The types of contracts that may be approved by the City Manager under an ordinance adopted pursuant to this section may include:

(1) Contracts for the purchase of apparatus, supplies, materials or equipment, and construction or repair work, provided that the City Council has approved a sufficient appropriation in the annual budget for the current fiscal year for the purposes specified under the contract, that the contract has been reviewed and approved by the City Attorney, and provided that the contract amount does not exceed the monetary amount at which formal bidding procedures are required under Chapter 143 of the General Statutes.

(2) Contracts for services or other matters that do not concern construction or repair work or the purchase of apparatus, supplies, materials, or equipment, provided that the City Council has approved a sufficient appropriation in the annual budget for the current fiscal year for the purposes specified under the contract, that the contract has been reviewed and approved by the City Attorney, and provided that the contract amount does not exceed the monetary amount set forth by the Council in the ordinance.

(3) Contracts that do not involve the expenditure of funds, provided that the purposes specified under the contract are necessary for or incidental to carrying out the routine affairs or business of the City and do not involve policy-making decisions that are solely within the realm of the Council's authority, and that the contract has been reviewed and approved by the City Attorney.

"Sec. 4.4. *Settlement of Claims.* The City Manager may, upon written recommendation of the City Attorney, execute releases of persons, firms, and corporations for damages to personal property belonging to the City, when the full amount of damages to the property has been ascertained and that amount has been paid in full to the City.

The Council may adopt an ordinance that delegates to the City Manager the authority, upon written recommendation from the City

Attorney, to approve settlements on behalf of the City in all claims or lawsuits of any kind or nature involving the City, including land condemnation lawsuits, and to execute any and all documents necessary for the settlement of those claims or lawsuits, when the monetary amount involved does not exceed an amount set forth by the Council in the ordinance. All such settlements shall be reported to the City Council in a timely manner and shall be subject to the applicable provisions of the Public Records law as set forth in Chapter 132 of the General Statutes.

"ARTICLE V. OTHER OFFICES AND POSITIONS.

"Sec. 5.1. *City Attorney.* The Council shall appoint a City Attorney licensed to practice law in North Carolina. It is the duty of the City Attorney to represent the City, advise City officials and perform other duties required by law or as the Council may direct. The Council may appoint or provide for one or more associate or assistant city attorneys who shall receive such compensation as may be fixed by the Council and who shall have full authority to exercise and perform any of the powers and duties of the City Attorney that may be specified by the Council or the City Attorney.

"Sec. 5.2. *City Clerk.* The Council shall appoint a City Clerk to keep a journal of the proceedings of the Council, to maintain official records and documents, to give notice of meetings, and to perform such other duties required by law or as the City Manager may direct.

"Sec. 5.3. *Tax Collector.* The Council shall appoint a Tax Collector pursuant to G.S. 105-349 to collect all taxes owed to the City, subject to general law, this Charter and City ordinances.

"Sec. 5.4. *Other Administrative Officers and Employees.* The Council may authorize other positions to be filled by appointment by the City Manager, and may organize the City government as deemed appropriate, subject to the requirements of general law.

"ARTICLE VI. PUBLIC IMPROVEMENTS.

"Sec. 6.1. *Authority to Waive Special Assessments.*

(a) In addition to the authority granted by Article 10 of Chapter 160A of the General Statutes, the Council may order that a special assessment be waived upon a determination that the property subject to the assessment will not be benefited by a local improvement. In the case of assessments for water and sewer improvements, examples of nonbenefited property may include property that is nonbuildable due to topography or applicable zoning or building requirements (lot size, setbacks, etc.), property that has access to existing City water or sewer facilities on or abutting the property, and property that is currently served by existing City water or sewer facilities.

In order to have property considered for a waiver under this section, the owner shall submit to the City Clerk, not later than the

time of the public hearing on the preliminary resolution adopted under G.S. 160A-223, an application on a form supplied by the City. The Council may provide for an appropriate application fee. The application shall describe the property adequately and specify the reasons the property would not be benefited by the local improvement. The Council shall schedule a public hearing, and shall provide notice of the hearing and its purpose to the other owners of property subject to special assessment for the project by first class mail not less than seven days before the hearing. City staff members may investigate the application.

At the hearing, the owner of the property under consideration, the owners of other properties subject to assessment for the project, and City staff, may submit evidence. The Council shall consider the evidence and make findings of fact.

If the Council concludes, based on its finding of fact, that the property will be benefited by the local improvement, it shall order that the request for waiver be denied. If the Council concludes that the property will not be benefited by the local improvement, it shall order the special assessment for the property to be waived. If a waiver is granted the property shall thereafter be listed on the assessment roll but shall be specified as exempt, and the assessment roll shall include a brief description of the reason for the waiver.

If the owner of the property under consideration, or the owners of any other properties subject to assessment for the project, are dissatisfied with the action of the Council under this section, a notice of appeal may be filed to the appropriate division of the General Court of Justice as provided by G.S. 160A-230.

(b) In addition to the authority granted by Article 10 of Chapter 160A of the General Statutes, the Council may order that a special assessment be waived if the property subject to the assessment is owned by (i) the State, or any board, agency, commission, or institution thereof; (ii) a local government or any unit thereof; or (iii) a school board. Such waivers shall be ordered in accordance with the procedure set forth in paragraph (a) of this section.

(c) If a special assessment project requires a petition signed by a majority of the affected property owners who must also represent a majority of the frontage abutting the project, the Council may exclude, in determining the number of property owners or the amount of frontage, any property that has been waived from special assessment under this section.

(d) The authority granted to the Council by this section shall apply retroactively to all special assessment projects for which the assessment roll has not been confirmed on the effective date of the act establishing this authority, provided that the public hearing on any

request for waiver is held prior to confirmation of the assessment roll for the project. Such waivers shall be ordered in accordance with the procedure set forth in paragraph (a) of this section, except that the deadline for submitting the application shall be no later than the day of the public hearing on the preliminary assessment roll adopted under G.S. 160A-227.

"Sec. 6.2. *Assessment Against Petitioned Properties.*

(a) Upon receipt of a petition from one or more owners of abutting property where fifty percent (50%) or more of the total street frontage is in single ownership, the Council may order the making of any local improvement. The Council may assess the cost thereof against the abutting property in the same manner and following the same procedure established by general law for making special assessments against property benefited by local improvements.

(b) The Council may order the making of any local improvement and assess the cost thereof, except the City's portion, if any, against only a limited number of abutting properties if the owners of those properties submit a petition asking that the improvement be made and that the total amount to be assessed for the improvement be assessed only against their properties.

"Sec. 6.3. *Authority to Order Street and Sidewalk Assessments Without Petition.*

If, in the Council's judgment, which shall be conclusive, the abutting property to be assessed will be benefited in an amount at least equal to the assessment, the Council may order the making of the local improvement without the necessity of a petition and may assess the cost thereof against the abutting properties in the following cases:

(1) When any street or part of a street is unsafe; or the improvement of a street or part of a street not more than three blocks in length (or 1500 linear feet, whichever is less) is necessary to connect streets already paved; or the improvement of a street or part of a street is necessary to connect a paved street, or portion thereof, with a paved highway; or the improvement of a street or part of a street is necessary to provide a paved approach to a railroad, street grade separation, or a bridge; or the widening of any street or part of a street is necessary to accommodate present and anticipated volumes of traffic.

(2) When any street or part of a street, or any property, is without storm sewer or other surface drainage improvements, and storm sewer or other surface drainage should be provided in the public interest.

(3) When any street or part of a street is without sidewalks and sidewalks should be provided in the public interest.

"Sec. 6.4. *Special Assessment Exemptions for Corner Lots.*

(a) The Council may establish schedules of exemptions from assessments for corner lots when a local improvement project is undertaken along either or both sides of such lots. The schedules of exemptions shall be established in accordance with Article 10 of Chapter 160A of the General Statutes.

(b) Once an exemption from assessment has been applied to a corner lot under a local improvement project, such lot shall not be subject to further assessment under a separate local improvement project for the same type of improvement, unless the lot has been subsequently divided, in which case the new lot(s) shall be subject to assessment.

"Sec. 6.5. *Other Special Assessments.*

(a) When a special assessment is made on the basis of the frontage abutting the improvement, and the property subject to the assessment is currently used for single family residential purposes, the Council may exempt such property from assessment for the amount of frontage in excess of two hundred feet (200').

(b) When a special assessment is made on the basis of the frontage abutting the improvement, and the property subject to the assessment is currently used for single family residential purposes, the Council may assess such property for forty feet (40') of frontage even if the actual frontage of the property is less than forty feet (40').

"Sec. 6.6. *Sidewalk and Driveway Repair.*

If the Council determines that the public interest requires repair of a sidewalk or portion of a driveway within the street right-of-way, the Council may order the making of a repair and assess the total cost against the property abutting the sidewalk or driveway repaired. Before an assessment may be made for the repair, at least 30 days' written notice shall be given to the abutting property owner personally or by registered or certified mail to the owner's last known address or the owner's address as shown on the tax records. The notice shall state that the owner is required to make the repair at his own expense in conformity with City standards and specifications, and that if he shall fail to make the repair within 30 days after notice is served, the City thereupon may make the repair and assess the cost. If the Council finds that any sidewalk or driveway is in need of immediate repair, the Council may adopt a resolution setting out its finding and directing that the repair be made immediately and that the cost be assessed against the abutting property without prior notice to the property owner affected.

"Sec. 6.7. *Planting Strip and Driveway Maintenance.*

It is the responsibility of the abutting property owner to maintain any property or driveway between the property line and the edge of the pavement or the curb of a paved street.

"ARTICLE VII. HOUSING MATTERS.

"Sec. 7.1. *Gastonia Fair Housing Act.* The Gastonia Fair Housing Act shall continue as authorized by Chapter 902, Session Laws of 1985, as amended by Chapter 931, Session Laws of 1987; and Chapter 510, Session Laws of 1989.

"Sec. 7.2. *Housing Code Lis Pendens.* The city is authorized to file housing code complaints, notices, and orders in *lis pendens*, as authorized by Chapter 221, Session Laws of 1987, as amended by Chapter 418, Session Laws of 1989.

"ARTICLE VIII. RETIREMENT.

"Sec. 8.1. *Gastonia Firemen's Supplemental Retirement Fund.* The Gastonia Firemen's Supplemental Retirement Fund shall continue as authorized by Chapter 537, Session Laws of 1949, as amended by Chapter 111, Session Laws of 1957; Chapter 51, Session Laws of 1975; and Chapter 1016, Session Laws of 1983 (Reg. Sess. 1984).

"Sec. 8.2. *Gastonia Policemen's Supplemental Retirement Fund.* The Gastonia Policemen's Supplemental Retirement Fund shall continue as authorized by Chapter 946, Session Laws of 1955, as amended by Chapter 112, Session Laws of 1957; Chapter 301, Session Laws of 1959; Chapter 979, Session Laws of 1965; and Chapter 809, Session Laws of 1983.

"ARTICLE IX. ADDITIONAL PROVISIONS.

"Sec. 9.1. *Public Enterprise User Fees and Charges.* Notwithstanding the provisions of G.S. 160A-314, or any other provision of law, in case any charges for utility service or for the use of utility facilities, or solid waste collection or disposal due and owing to the City are not paid within 10 days after they become due, then such charges and any penalties assessed for nonpayment shall become a lien upon the property served or in connection with which the service or facility is used and upon all personal property situated upon such real property, as originally authorized by Chapter 910, Session Laws of 1971. The charge may at any time thereafter be collected, either by suit in the name of the City or by the City Tax Collector, through the sale of the property upon which the lien attaches at the Gaston County courthouse door, after advertising the sale once a week for four successive weeks in a newspaper of general circulation in the City which is qualified to carry legal notices. The sale shall be made under the same rules and regulations, and subject to the same costs and penalties and to the same rights of redemption as are provided by law for the foreclosure of the lien on personal property and on real estate for taxes.

"Sec. 9.2. *Alcoholic Beverages.* The City of Gastonia Board of Alcoholic Beverage Control shall consist of five members appointed for three-year overlapping terms as originally authorized by Chapter 910, Session Laws of 1971, before the effective date of Chapter 18B of the General Statutes. Otherwise, the City of Gastonia Board of Alcoholic Beverage Control shall be subject to the provisions of Article 7 of Chapter 18B of the General Statutes of North Carolina.

"Sec. 9.3. *Gastonia Airport Authority.* The Gastonia Airport Authority shall continue as authorized by Chapter 648, Session Laws of 1981, as amended by Chapter 1158, Session Laws of 1981; and Chapter 945, Session Laws of 1983.

"Sec. 9.4. *Zoning Protest Petition Voting.* For purposes of the vote of the Council that may be required for a zoning change under G.S. 160A-385, the requirement shall be three-fourths of all the members of the Council not excused from voting, as originally authorized by Chapter 910, Session Laws of 1971.

"Sec. 9.5. *Motor Vehicle Tax.* For purposes of the municipal motor vehicle tax authorized by G.S. 20-97(a), the Council may levy not more than fifteen dollars ($15.00) per year upon any vehicle, as originally authorized by Chapter 1016, Session Laws of 1989.

"Sec. 9.6. *Lease of City Property.* As originally authorized by Chapter 910, Session Laws of 1971, notwithstanding the provisions of G.S. 160A-272, the Council may lease property owned by the City for a period not to exceed 15 years without following the procedures authorized for the sale of real property.

"Sec. 9.7. *Rewards for Conviction of Certain Offenses.* As originally authorized by Chapter 910, Session Laws of 1971, the Council may offer and pay rewards for the conviction of any person or persons alleged to have committed criminal offenses that, in the judgment of the Council, involve serious danger to the public peace or public safety. The Council shall fix the terms, conditions, and amounts of such rewards. Rewards shall be paid only by order of the Council from nontax revenues in the general fund of the City; and the Council shall, in its discretion, determine who shall be entitled to the collection of any reward. In addition, the Council may allocate funds from nontax revenues in the general fund for the payment of informant's fees concerning such criminal offenses.

"Sec. 9.8. *Building Setback Lines.* In addition to the authority granted by G.S. 160A-306, the Council may exercise authority under that section within the extraterritorial jurisdiction of the City.

"Sec. 9.9. *Organization, Operation, and Dissolution of Municipal Bodies.* The Council shall have the authority to provide for the organization, operation, and dissolution of all governmental bodies of the City, except as limited by law.

"Sec. 9.10. *Annexation Agreements.* In addition to the authority contained in general law, the City may enter into annexation agreements with other municipalities as authorized by Chapter 204, Session Laws of 1987. To that end, the two shall be considered concurrent sources of authority."

Sec. 2. The purpose of this act is to revise the Charter of the City of Gastonia and to consolidate certain acts concerning the property, affairs, and government of the City. It is intended to continue without interruption those provisions of prior acts which are expressly consolidated into this act, so that all rights and liabilities which have accrued are preserved and may be enforced.

Sec. 3. This act does not repeal or affect any acts validating official actions, proceedings, contracts, or obligations of any kind, including:

Chapter 874,	Session Laws of 1955
Chapter 164,	Session Laws of 1957
Chapter 172,	Session Laws of 1979
Chapter 610,	Session Laws of 1989.

Sec. 4. (a) All local acts concerning the City of Gastonia that were ratified before July 19, 1971, are repealed, with the exception of acts affecting conveyance of property, acts relating to policemen and firemen supplemental pension funds and other acts listed in subsection (b). The following acts, having served the purposes for which they were enacted or having been consolidated into this act, are expressly repealed:

Chapter 910,	Session Laws of 1971, except for Section 2
Chapter 925,	Session Laws of 1973
Chapter 1101,	Session Laws of 1973
Chapter 1187,	Session Laws of 1973
Chapter 778,	Session Laws of 1975
Chapter 1149,	Session Laws of 1977
Chapter 176,	Session Laws of 1983
Chapter 1016,	Session Laws of 1989.

(b) The following acts are not repealed by this act and continue in effect:

Chapter 537,	Session Laws of 1949
Chapter 946,	Session Laws of 1955
Chapter 111,	Session Laws of 1957
Chapter 112,	Session Laws of 1957
Chapter 301,	Session Laws of 1959
Chapter 979,	Session Laws of 1965
Chapter 51,	Session Laws of 1975
Chapter 648,	Session Laws of 1981

Chapter 1158,	Session Laws of 1981
Chapter 809,	Session Laws of 1983
Chapter 945,	Session Laws of 1983
Chapter 1016,	Session Laws of 1983
Chapter 902,	Session Laws of 1985
Chapter 221,	Session Laws of 1987
Chapter 931,	Session Laws of 1987
Chapter 1038,	Session Laws of 1987
Chapter 510,	Session Laws of 1989
Chapter 418,	Session Laws of 1989.

Sec. 5. The Mayor and Council members serving on the date of ratification of this act shall serve until the expiration of their terms. To stagger the terms of Council members, the three Council members elected in the 1991 election from City Wards 1, 3, and 5 shall serve two-year terms instead of the four-year terms established under Articles II and III of the Charter in Section 1 of this act. The three Council members elected in the 1991 election from City Wards 2, 4, and 6 shall serve four-year terms in accordance with Articles II and III of the Charter in Section 1 of this act.

Sec. 6. This act does not affect any rights or interests that arose under any provisions repealed by this act.

Sec. 7. All existing ordinances, resolutions, and other provisions of the City of Gastonia not inconsistent with the provisions of this act shall continue in effect until expressly repealed or amended.

Sec. 8. No action or proceeding pending on the effective date of this act by or against the City or any of its departments or agencies is abated or otherwise affected by this act.

Sec. 9. If any provision or application of this act is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Sec. 10. Whenever a reference is made in this act to a particular provision of the General Statutes, and such provision is later amended, superseded, or recodified, the reference shall be deemed amended to refer to the amended General Statute, or to the General Statute which most clearly corresponds to the statutory provision which is superseded or recodified.

Sec. 11. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 796 **CHAPTER 558**

AN ACT TO EXTEND TO PENDER AND SAMPSON COUNTIES LAWS THAT REQUIRE VACANCIES IN THE OFFICES OF SHERIFF AND COUNTY COMMISSIONER TO BE FILLED WITH THE NOMINEE OF THE POLITICAL PARTY EXECUTIVE COMMITTEE OF THE VACATING MEMBER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-27.1 reads as rewritten:

"*§ 153A-27.1. Vacancies on board of commissioners in certain counties.*

(a) If a vacancy occurs on the board of commissioners, the remaining members of the board shall appoint a qualified person to fill the vacancy. If the number of vacancies on the board is such that a quorum of the board cannot be obtained, the chairman of the board shall appoint enough members to make up a quorum, and the board shall then proceed to fill the remaining vacancies. If the number of vacancies on the board is such that a quorum of the board cannot be obtained and the office of chairman is vacant, the clerk of superior court of the county shall fill the vacancies upon the request of any remaining member of the board or upon the petition of any registered voters of the county.

(b) If the member being replaced was serving a two-year term, or if the member was serving a four-year term and the vacancy occurs later than 60 days before the general election held after the first two years of the term, the appointment to fill the vacancy is for the remainder of the unexpired term. Otherwise, the term of the person appointed to fill the vacancy extends to the first Monday in December next following the first general election held more than 60 days after the day the vacancy occurs; at that general election, a person shall be elected to the seat vacated for the remainder of the unexpired term.

(c) To be eligible for appointment to fill a vacancy, a person must (i) be a member of the same political party as the member being replaced, if that member was elected as the nominee of a political party, and (ii) be a resident of the same district as the member being replaced, if the county is divided into electoral districts.

(d) If the member who vacated the seat was elected as a nominee of a political party, the board of commissioners, the chairman of the board, or the clerk of superior court, as the case may be, shall consult the county executive committee of the appropriate political party before filling the vacancy, and shall appoint the person recommended by the county executive committee of the political party of which the commissioner being replaced was a member, if the party

makes a recommendation within 30 days of the occurrence of the vacancy.

(e) Whenever because of G.S. 153A-58(3)b. or because of any local act, only the qualified voters of an area which is less than the entire county were eligible to vote in the general election for the member whose seat is vacant, the appointing authority must accept the recommendation only if the county executive committee restricted voting to committee members who represent precincts all or part of which were within the territorial area of the district of the county commissioner.

(f) The provisions of any local act which provides that a county executive committee of a political party shall fill any vacancy on a board of county commissioners are repealed.

(g) Counties subject to this section are not subject to G.S. 153A-27.

(h) This section shall apply only in the following counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Dare, Davidson, Davie, Forsyth, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Madison, McDowell, Mecklenburg, Moore, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 2. G.S. 162-5.1 reads as rewritten:

"§ *162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.*

If any vacancy occurs in the office of sheriff, the coroner of the county shall execute all process directed to the sheriff until the board shall elect a sheriff to supply the vacancy for the residue of the term, who shall possess the same qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly elected. If the sheriff were elected as a nominee of a political party, the board of commissioners shall consult the county executive committee of that political party before filling the vacancy, and shall elect the person recommended by the county executive committee of that party, if the party makes a recommendation within 30 days of the occurrence of the vacancy. If the board should fail to fill such vacancy, the coroner shall continue to discharge the duties of sheriff until it shall be filled.

In those counties where the office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years of service, shall perform all the duties of the sheriff until the county commissioners appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full authority.

This section shall apply only in the following Counties: Alamance, Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret, Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford, Haywood, Henderson, Hyde, Jackson, Lincoln, Madison, McDowell, Mecklenburg, Moore, New Hanover, Onslow, Pender, Polk, Randolph, Rockingham, Rutherford, Sampson, Stanly, Stokes, Transylvania, Wake, and Yancey."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 802 **CHAPTER 559**

AN ACT TO ENABLE THE TOWN OF LAUREL PARK TO ASSESS BENEFITED PROPERTY OWNERS FOR STREET AND SIDEWALK IMPROVEMENTS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 100 of the 1925 Private Laws, being the Charter of the Town of Laurel Park, as amended by Chapter 35 of the 1935 Private Laws, Chapter 95 of the 1961 Session Laws, and Chapter 878 of the 1989 Session Laws, is further amended by adding a new section to read:

"Sec. 6b. *Assessment for Street and Sidewalk Improvements.*

(a) In addition to any authority granted by general law, the Board may order street improvements and assess the costs thereof against abutting property in accordance with the provisions of this section.

(b) The Board may order street improvements and assess the total costs thereof against abutting property, exclusive of the costs incurred at street intersections, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes, upon request of a minimum of thirty percent (30%) in number of the property owners to be assessed, if the Board makes a finding of fact that the street improvement project does not exceed 1,200 linear feet, and:

(1) That the street or part thereof is unsafe for vehicular traffic or creates a safety or health hazard and it is in the public interest to make such improvements;

(2) That it is in the public interest to connect two streets or portions of a street already improved; or

(3) That it is in the public interest to widen a street, or part thereof, which is already improved.

Assessments for widening any street or portion of a street shall be limited to the cost of widening and otherwise improving such street in accordance with street classification and improvement standards established by the Town, as applied to the particular street or part thereof.

(c) For the purposes of this section, the term 'street improvement' includes grading, regrading, surfacing, resurfacing, widening, paving, repaving, acquisition of right-of-way, and construction or reconstruction of curbs, gutters, and street drainage facilities.

(d) In addition to any authority granted by general law, the Board may, upon request of a minimum of thirty percent (30%) in number of the property owners to be assessed, order sidewalk improvements or repairs according to standards and specifications of the Town, and to assess the total costs thereof against abutting property, according to one or more of the assessment bases set forth in Article 10 of Chapter 160A of the General Statutes; provided that regardless of the assessment basis or bases employed, the Board may order the costs of sidewalk improvements made only on one side of a street to be assessed against property abutting both sides of such street.

(e) In ordering street and sidewalk improvements and assessing the costs thereof under authority of this section, the Board shall comply with the procedures required by Article 10 of Chapter 160A of the General Statutes, except those provisions relating to petitions of property owners and the sufficiency thereof. The effect of the act of levying assessments under authority of this section shall be the same as if assessments were levied under authority of Article 10 of Chapter 160A of the General Statutes.

(f) The Board shall adopt procedures to provide for an exemption from the obligation to pay assessments levied under the authority of this section, such exemption to be based on demonstrated hardship and inability to pay."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 824 **CHAPTER 560**

AN ACT TO MAKE AMENDMENTS TO THE DURHAM CITY CHARTER RELATING TO THE TRANSPORTATION AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, is amended by adding a new section to read:

"Sec. 109.1. *Public Transportation Authority.* In establishing a Public Transportation Authority pursuant to the North Carolina Public Transportation Authority Act, Article 25 of Chapter 160A of the General Statutes, the City Council may:

(1) Require that a majority vote of all of the members of the Authority shall be required to constitute action of the Authority;

(2) Provide that no member of the Authority shall be excused from voting except on matters involving consideration of the member's own official conduct, or where the member's financial interests are involved, and that in all other cases, a failure to vote by a member who is physically present at an Authority meeting, or who has withdrawn without being excused by a majority vote of the remaining members present, shall be recorded as an affirmative vote; and

(3) Appoint and provide compensation for alternate members to serve on the Authority in the absence of any regular member and to prescribe the terms of such alternate members. Each alternate member, so appointed, while attending any meeting of the Authority and serving in the absence of any regular member, shall have and exercise all the powers and duties of a regular member."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 895 **CHAPTER 561**

AN ACT TO ESTABLISH RETAIL PRICE TO BE PAID FOR WARRANTY WORK PERFORMED BY MOTOR VEHICLE DEALERS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-305.1(a) reads as rewritten:

"(a) Each motor vehicle manufacturer, factory branch, distributor or distributor branch, shall specify in writing to each of its motor vehicle dealers licensed in this State the dealer's obligations for preparation, delivery and warranty service on its products, the schedule of compensation to be paid such dealers for parts, work, and service in connection with warranty service, and the time allowances for the performance of such work and service. In no event shall such

schedule of compensation fail to include reasonable compensation for diagnostic work and associated administrative requirements as well as repair service and labor. Time allowances for the performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section, the factors to be given consideration shall include, among others, the compensation being paid by other manufacturers to their dealers, the retail price the dealers charge their retail customers for parts used to perform similar work, and paid to dealers for parts, other than parts used to repair the living facilities of recreational vehicles, and the prevailing wage rates being paid by dealers, and the prevailing labor rate being charged by ~~dealers,~~ dealers to their retail customers, in the community in which the dealer is doing ~~business.~~ business, provided such rates and prices are not unreasonable."

Sec. 2. G.S. 20-305.1(b) reads as rewritten:

"(b) Notwithstanding the terms of any franchise agreement, it is unlawful for any motor vehicle manufacturer, factory branch, distributor, or distributor branch to fail to perform any of its warranty obligations with respect to a motor vehicle, to fail to compensate its motor vehicle dealers licensed in this State for warranty ~~parts,~~ parts other than parts used to repair the living facilities of recreational vehicles, at the prevailing retail rate according to the factors in subsection (a) of this section, or, in service in accordance with the schedule of compensation provided the dealer pursuant to subsection (a) above, and to fail to indemnify and hold harmless its franchised dealers licensed in this State against any judgment for damages or settlements agreed to by the manufacturer, including, but not limited to, court costs and reasonable attorneys' fees of the motor vehicle dealer, arising out of complaints, claims or lawsuits including, but not limited to, strict liability, negligence, misrepresentation, express or implied warranty, or recision or revocation of acceptance of the sale of a motor vehicle as defined in G.S. 25-2-608, to the extent that the judgment or settlement relates to the alleged defective negligent manufacture, assembly or design of new motor vehicles, parts or accessories or other functions by the manufacturer, factory branch, distributor or distributor branch, beyond the control of the dealer."

Sec. 3. G.S. 20-305.1 is amended by adding a new subsection to read:

"(b1) All claims made by motor vehicle dealers pursuant to this section for compensation for delivery, preparation, warranty and recall work including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after receipt of claim from the dealer. When any claim is disapproved, the dealer shall be notified in writing

of the grounds for disapproval. Any claim not specifically disapproved in writing within 30 days after receipt shall be considered approved and payment is due immediately. No claim which has been approved and paid may be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition, or the dealer failed to reasonably substantiate the claim in accordance with the written requirements of the manufacturer or distributor in effect at the time the claim arose."

Sec. 4. G.S. 20-305.1(f) reads as rewritten:

"The provisions of subsections, (a), (b), (b1), (d) and (e) shall not apply to manufacturers and dealers of 'motorcycles' as defined in G.S. 20-4.01(27)."

Sec. 5. This act becomes effective September 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 918 **CHAPTER 562**

AN ACT TO AMEND THE INSURANCE LAWS TO CLARIFY THE PERMISSIBLE ACTIVITIES OF INSURANCE AGENCY OFFICE EMPLOYEES, AND TO PROVIDE FOR TRANSFER BY DESIGNATED AGENTS UNDER THE REINSURANCE FACILITY OF THEIR DESIGNATIONS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 58-33-25(o) reads as rewritten:

"(o) No license as an agent, broker, or limited representative is required of the following:

(1) Any regular salaried officer or employee of an insurance company, of a licensed agent, of a broker, or of a limited representative, if such officer's or employee's duties and responsibilities do not include the negotiation or solicitation of insurance.

(2) Persons who secure and furnish information on behalf of an employer, where no commission is paid for such service, for the purpose of group or wholesale life insurance, annuities, or group, blanket or franchise health insurance; or for enrolling individuals under such plans or issuing certificates thereunder; or otherwise assisting in administering such plans.

(3) Employers or their officers or employees, or the trustees of any employee trust plan, to the extent that such employers, officers, employees, or trustees are engaged in the

administration or operation of any program of employee benefits for their own employees or the employees of their subsidiaries or affiliates involving the use of insurance issued by a licensed insurance company; provided that such employers, officers, employees, or trustees are not in any manner compensated, directly or indirectly, by the insurance company issuing such insurance.

(4) Agency office employees acting within the confines of the agent's office, under the direction and personal supervision of the duly licensed agent and within the scope of ~~such~~ the agent's license, in the acceptance of ~~requests for insurance and~~ applications, personally underwritten by the agent, payment of ~~premiums~~ premiums, and the performance of clerical, stenographic, and similar office ~~duties.~~ duties; provided that the activity does not amount to the interpretation of insurance policies, provisions or coverage, to sales or negotiation of insurance policies, to any underwriting function, or to the signing or verification of applications for insurance.

(5) Licensed insurers authorized to write the kinds of insurance described in G.S. 58-7-15(1) through G.S. 58-7-15(3) that do business without the involvement of a licensed agent."

Sec. 2. G.S. 58-37-35(g) reads as rewritten:

"(g) Except as may be delegated specifically to others in the plan of operation or reserved to the members, power and responsibility for the establishment and operation of the Facility is vested in the Board of Governors, which power and responsibility include but is not limited to the following:

(1) To sue and be sued in the name of the Facility. No judgment against the Facility shall create any direct liability in the individual member companies of the Facility.

(2) To receive and record cessions.

(3) To assess members on the basis of participation ratios established in the plan of operation to cover anticipated or incurred costs of operation and administration of the Facility at such intervals as are established in the plan of operation.

(4) To contract for goods and services from others to assure the efficient operation of the Facility.

(5) To hear and determine complaints of any company, agent or other interested party concerning the operation of the Facility.

(6) Upon the request of any licensed fire and casualty agent meeting any two of the standards set forth below as

determined by the Commissioner of Insurance within 10 days of the receipt of the application, the Facility shall contract with one or more members within 20 days of receipt of the determination to appoint such licensed fire and casualty agent as designated agents in accordance with reasonable rules as are established by the plan of operation. ~~Such standard~~ The standards shall be:

a. Whether the agent's evidence establishes that he has been conducting his business in a community for a period of at least one year;
b. Whether the agent's evidence establishes that he had a gross premium volume during the 13 months next preceding the date of his application of at least twenty thousand dollars ($20,000) from motor vehicle insurance;
c. Whether the agent's evidence establishes that the number of eligible risks served by him during the 13 months next preceding the date of application was 200 or more;
d. Whether the agent's evidence establishes a growth in eligible risks served and premium volume during his years of service as an agent;
e. Whether the agent's evidence establishes that he made available to eligible risks premium financing or any other plan for deferred payment of premiums.

With respect to business produced by designated agents, adequate provision shall be made by the Facility to assure that such business is rated using Facility rates. All business produced by designated agents may be ceded to the Facility, except designated agents appointed ~~prior to~~ before September 1, 1987, may place liability insurance policies with a voluntary carrier, provided that all policies written by the voluntary carrier are retained by the voluntary carrier unless ceded to the Facility using Facility rates. Designated agents must provide the Facility with a list of such policies written by the voluntary carrier at least annually, or as requested by the Facility, on a form approved by the Facility. If no insurer is willing to contract with any such agent on terms acceptable to the Board, the Facility shall license such agent to write directly on behalf of the Facility. However, for this purpose the Facility does not act as an insurer, but acts only as the statutory agent of all of the members of the Facility, which shall be bound on risks written by the Facility's appointed

agent. The Facility may contract with one or more servicing carriers and shall promulgate fair and reasonable underwriting procedures to require that business produced by Facility agents and written through ~~said~~ those servicing carriers shall be rated using Facility rates. All business produced by Facility agents may be ceded to the Facility. Any designated agent who is disabled or retiring or the estate of any deceased designated agent may transfer the designation and the book of business to some other licensed fire and casualty agent meeting the requirements of this section and under rules established by the Facility, and a transfer from a designated agent appointed before September 1, 1987, shall entitle the transferee designated agent to place liability insurance policies with a voluntary carrier.

The Commissioner shall require, as a condition precedent to the issuance, renewal, or continuation of a resident agent's license to any designated agent to act for the company appointing such designated agent under contract with the Facility, that the designated agent file and thereafter maintain in force while so licensed a bond in favor of the State of North Carolina executed by an unauthorized corporate surety approved by the Commissioner, cash, mortgage on real property, or other securities approved by the Commissioner, in the amount of ten thousand dollars ($10,000) for the use of aggrieved persons. Such bond, cash, mortgage, or other securities shall be conditioned on the accounting by the designated agent (i) to any person requesting the designated agent to obtain motor vehicle insurance for moneys or premiums collected in connection therewith, and (ii) to the company providing coverage with respect to any such moneys or premiums under contract with the Facility. Any such bond shall remain in force until the surety is released from liability by the Commissioner, or until the bond is cancelled by the surety. Without prejudice to any liability accrued prior to such cancellation, the surety may cancel the bond upon 30 days' advance notice in writing filed with the Commissioner.

No agent may be designated under this subdivision to any insurer that does not actively write voluntary market business.

(7) To maintain all loss, expense, and premium data relative to all risks reinsured in the Facility, and to require each

member to furnish such statistics relative to insurance reinsured by the Facility at such times and in such form and detail as may be required.

(8) To establish fair and reasonable procedures for the sharing among members of any loss on Facility business which cannot be recouped pursuant to G.S. 58-37-40(f) or which cannot be recouped or allocated under G.S. 58-37-75, and other costs, charges, expenses, liabilities, income, property and other assets of the Facility and for assessing or distributing to members their appropriate shares. Such shares may be based on the member's premiums for voluntary business for the appropriate category of motor vehicle insurance or by any other fair and reasonable method.

(9) To receive or distribute all sums required by the operation of the Facility.

(10) To accept all risks submitted in accordance with this Article.

(11) To establish procedures for reviewing claims practices of member companies to the end that claims to the account of the Facility will be handled fairly and efficiently.

(12) To adopt and enforce all rules and to do anything else where the Board is not elsewhere herein specifically empowered which is otherwise necessary to accomplish the purpose of the Facility and is not in conflict with the other provisions of this Article."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 944 **CHAPTER 563**

AN ACT TO AMEND G.S. 1-288 REGARDING THE TIME FOR TAKING APPEAL IN FORMA PAUPERIS IN ORDER TO CONFORM THIS STATUTE TO THE RULES OF APPELLATE PROCEDURE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1-288 reads as rewritten:

"*§ 1-288. Appeals in forma pauperis; clerk's fees.*

When any party to a civil action tried and determined in the superior or district court at the time of trial or special proceeding desires an appeal from the judgment rendered in the action to the Appellate Division, and is unable, by reason of his poverty, to make

the deposit or to give the security required by law for said appeal, it shall be the duty of the judge or clerk of said court to make an order allowing said party to appeal from the judgment to the Appellate Division as in other cases of appeal, without giving security therefor. The party desiring to appeal from the judgment ~~shall, during the session at which the judgment was rendered or within 10 days from the expiration by law of the session,~~ or order in a civil action or special proceeding shall, within 30 days after the entry of the judgment or order, make affidavit that he is unable by reason of his poverty to give the security required by law, and that he is advised by a practicing attorney that there is error in matter of law in the decision of the court in said action. The affidavit must be accompanied by a written statement from a practicing attorney of said court that he has examined the affiant's case, and is of opinion that the decision of the court, in said action, is contrary to law. Nothing contained in this section deprives the clerk of the superior court of his right to demand his fees for his certificate and seal as now allowed by law in such cases. Provided, that where the judge or the clerk has made an order allowing the appellant to appeal as a pauper and the appeal has been filed in the Appellate Division, and an error or omission has been made in the affidavit or certificate of counsel, and the error is called to the attention of the court before the hearing of the argument of the case, the court shall permit an amended affidavit or certificate to be filed correcting the error or omission."

Sec. 2. This act becomes effective October 1, 1991 and applies to all appeals in forma pauperis from a judgment or order entered on or after that date.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 953 **CHAPTER 564**

AN ACT TO EXEMPT AREA MENTAL HEALTH AUTHORITIES FROM CERTAIN PROVISIONS OF THE STATE PERSONNEL ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 126-11 reads as rewritten:

"*§ 126-11. Local personnel system may be established; approval and monitoring; rules and regulations.*

(a) The board of county commissioners of any county may establish and maintain a personnel system for all employees of the county subject to its jurisdiction, which system and any substantial changes to the system, shall be approved by the State Personnel Commission as

substantially equivalent to the standards established under this Chapter for employees of local departments of social services, local health departments, and area mental health programs, local emergency management programs. If approved by the State Personnel Commission, the employees covered by the county system shall be exempt from all provisions of this Chapter except Article 6.

(a1) With approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, the area mental health authority may establish and maintain a personnel system for all employees of the area mental health authority, which system and any substantial changes to the system, shall be equivalent to the standards established under this Chapter for employees of area mental health authorities. If approved by the State Personnel Commission, the employees covered by the area mental health authority system shall be exempt from all provisions of this Chapter except Article 6.

(b) A board of county commissioners may petition the State Personnel Commission to determine whether any portion of its total personnel system meets the requirements in (a) above. Upon such determination, county employees shall be exempt from the provisions of this Chapter relating to the approved portions of the county personnel system.

(b1) The board of an area mental health authority, with the approval of each of the boards of commissioners of the county or counties which comprise the area mental health authority, may petition the State Personnel Commission to determine whether any portion of its total personnel system meets the requirements in subsection (a1) above. Upon such determination, area mental health authority employees shall be exempt from the provisions of this Chapter relating to the approved portions of the area mental health authority personnel system except as provided in G.S. 122C-121.

(c) The Office of State Personnel shall monitor at least annually county ~~personnel systems~~ or area mental health authority personnel systems approved under this section in order to ensure compliance.

(d) In order to define 'substantially equivalent,' the State Personnel Commission is authorized to promulgate rules and regulations to implement the federal merit system standards and these regulations at a minimum shall include: recruitment and selection of employees; position classification; pay administration; training; employee relations; and records and reports."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 989 **CHAPTER 565**

AN ACT TO PROVIDE A SEPARATE ABC PERMIT FOR HOTELS CHOOSING TO OFFER ALCOHOLIC BEVERAGE SALES FROM LOCKED CABINETS IN GUEST ROOMS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 18B-1001 is amended by adding a new subdivision to read:

"(12) Guest Room Cabinet Permit. -- A guest room cabinet permit authorizes a hotel having a mixed beverages permit to sell to its room guests, from securely locked cabinets, malt beverages, unfortified wine, fortified wine, and spirituous liquor. A permittee shall designate and maintain at least ten percent (10%) of the permittee's guest rooms as rooms that do not have a guest room cabinet. A permittee may dispense alcoholic beverages from a guest room cabinet only in accordance with written policies and procedures filed with and approved by the Commission. A permitee shall provide a reasonable number of vending machines, coolers or similar machines on premises for the sale of soft drinks to hotel guests."

Sec. 2. G.S. 18B-902(d) is amended by adding a new subdivision to read:

"(29) Guest room cabinet permit. -- $750.00."

Sec. 3. G.S. 18B-903(b) reads as rewritten:

"(b) Renewal. -- Application for renewal of an ABC permit shall be on a form provided by the Commission. An application for renewal shall be accompanied by an application fee of twenty-five percent (25%) of the original application fee set in G.S. 18B-902, except that the renewal application fee for a each mixed beverages permit and each guest room cabinet permit shall be five hundred dollars ($500.00). A renewal fee shall not be refundable."

Sec. 4. G.S. 18B-804(b) is amended by adding a new subdivision to read:

"(9) If the spirituous liquor is sold to a guest room cabinet permittee for resale, a charge of fifteen dollars ($15.00) on each four liters and a proportional sum on lesser quantities."

Sec. 5. G.S. 18B-404(d) reads as rewritten:

"(d) Size of Bottles. -- A purchase-transportation permit for a mixed beverages permittee shall authorize the purchase and transportation only of 750 milliliter or larger containers. A purchase-transportation permit for a mixed beverages permittee who is also a guest room

cabinet permittee may authorize the purchase and transportation of containers in sizes approved by the Commission."

Sec. 6. G.S. 18B-1007(b)(1) reads as rewritten:

"(1) Store any other spirituous liquor with liquor possessed for resale in mixed ~~beverages;~~ beverages or from a guest room cabinet;"

Sec. 7. This act applies to those counties subject to G.S. 18B-600(f). This act also applies to those counties which have a population in excess of 150,000 by the last federal census.

Sec. 8. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 465 **CHAPTER 566**

AN ACT TO TRANSFER THE COMMUNITY PENALTIES PROGRAM FROM THE DEPARTMENT OF CRIME CONTROL AND PUBLIC SAFETY TO THE ADMINISTRATIVE OFFICE OF THE COURTS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding the provisions of Section 130 of Chapter 1066 of the 1989 Session Laws, the statutory authority, powers, duties, and functions, records, personnel, property, unexpended balances of appropriations, allocations or other funds, including the functions of budgeting and purchasing, of the Department of Crime Control and Public Safety to conduct the community penalties program, as provided by Part 6 of Article 11 of Chapter 143B of the General Statutes, are transferred to the Administrative Office of the Courts.

The transfer directed by this section shall include two community specialists I, position numbers 4971-0000-0009-120 and 4971-0000-0009-232, and one clerk-typist IV, position number 4971-0000-0009-202. The Office of State Budget and Management shall ensure that the transfer directed by this section is carried out.

Sec. 2. Part 6 of Article 11 of Chapter 143B of the General Statutes, G.S. 143B-500 through G.S. 143B-507, is recodified as Article 61 of Subchapter XIII of Chapter 7A of the General Statutes, G.S. 7A-770 through G.S. 7A-777. The Revisor of Statutes shall change any references to "this Part" to "this Article".

Sec. 3. G.S. 143B-500, as recodified as G.S. 7A-770 by Section 2 of this act, reads as rewritten:

"§ *7A-770. Purpose.*

This Article shall be known and may be cited as the 'Community Penalties Act of 1983.' The purpose of this Article is to reduce prison overcrowding by providing the judicial system with community sentences to be used in lieu of and at less cost than imprisonment. In furtherance of this purpose, this Article provides for the following:

(1) Establishment of local sentencing alternatives for felons who require less than institutional custody but more than regular probation supervision.

(2) Increased opportunities for ~~nonviolent~~ certain felons to make restitution to victims of crime through financial reimbursement or community service.

(3) Local involvement in the development of community penalties to assure that they are specifically designed to meet local needs.

(4) Reduced expenditures of State funds through an emphasis on alternative penalties for offenders so that new prisons need not be built or new space added."

Sec. 4. G.S. 143B-501, as recodified as G.S. 7A-771 by Section 2 of this act, reads as rewritten:

"*§ 7A-771. Definitions.*

As used in this Part:

(1) 'Community penalties program' means an agency within the judicial district which shall (i) prepare community penalty plans; (ii) arrange or contract with public and private agencies for necessary services for offenders; and (iii) monitor the progress of offenders placed on community penalty plans.

(2) 'Community penalty plan' means a plan presented in writing to the sentencing judge which provides a detailed description of the targeted offender's proposed community penalty.

(2a) 'Director' means the Director of the Administrative Office of the Courts.

(3) 'Judicial district' means a district court district as defined in G.S. 7A-133.

(4) ~~'Secretary' means the Secretary of the Department of Crime Control and Public Safety.~~

(5) 'Targeted offenders' means persons convicted of ~~nonviolent misdemeanors~~ misdemeanors, ~~or nonviolent Class H, I, or J felonies~~ Class H felonies other than involuntary manslaughter, or Class I or J felonies, who would be eligible for intensive probation or house arrest, and who are facing an imminent and substantial threat of imprisonment."

Sec. 5. G.S. 143B-502, as recodified as G.S. 7A-772 by Section 2 of this act, reads as rewritten:

"*§ 7A-772. Allocation of funds.*

The ~~Secretary~~ Director may award grants in accordance with the policies established by this Part and ~~within the limits of any appropriation~~ in accordance with any laws made for that purpose, including appropriations acts and provisions in appropriations acts, and adopt regulations for the implementation, operation, and monitoring of community penalties programs. Community penalties programs that are grantees shall use such funds to develop, implement, and monitor community penalty plans. Grants shall be awarded by the ~~Secretary~~ Director to agencies whose comprehensive program plans promise best to meet the goals set forth herein."

Sec. 6. G.S. 143B-505, as recodified as G.S. 7A-775 by Section 2 of this act, reads as rewritten:

"*§ 7A-775. ~~Advisory~~ Community penalties board.*

Each community penalties program shall establish a community penalties ~~advisory~~ board to provide ~~advice~~ direction and assistance to the community penalties program in the implementation and evaluation of the plan. Community penalties boards may be organized as nonprofit corporations under Chapter 55A of the General Statutes. The ~~advisory~~ community penalties board shall consist of not less than 12 members, and shall include, insofar as possible, judges, district attorneys, attorneys, social workers, law-enforcement officers, probation officers, and other interested persons. The ~~advisory~~ community penalties board shall meet on a regular ~~basis and advise the community penalties program.~~ basis, and its duties include, but are not limited to, the following:

(1) Development of an annual budget for the program;
(2) Hiring, firing, and evaluation of program personnel;
(3) Selection of board members;
(4) Arranging for a private and independent annual audit;
(5) Development of procedures for contracting for services."

Sec. 7. The Revisor of Statutes shall change any remaining references in G.S. 7A-770 through G.S. 7A-777 to "the Secretary" to "the Director".

Sec. 8. Rules adopted by the Department of Crime Control and Public Safety that are in effect on the effective date of this act apply to the Administrative Office of the Courts until amended or repealed by the Administrative Office of the Courts.

Sec. 9. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 802 **CHAPTER 567**

AN ACT TO CLARIFY THE STATE POLICY REGARDING WATER WITHDRAWALS AND TO PROVIDE REMEDIES FOR WATER WITHDRAWALS WHICH ARE CONTRARY TO PUBLIC POLICY.

The General Assembly of North Carolina enacts:

Section 1. Article 21 of Chapter 143 of the General Statutes is amended by adding a new section to read:

"*§ 143-215.22A. Water withdrawal policy; remedies.*

(a) It is against the public policy of North Carolina to withdraw water from any major river or reservoir if both of the following factors are present: (i) the withdrawal will cause the natural flow of water in the river or a portion of the reservoir to be reversed; and (ii) substantial portions of the water are not returned to the river system after use. For purposes of this section, a withdrawal will cause natural flow to be reversed if as a result of the withdrawal, the rate of flow in the river or discrete portion of the reservoir is 15 cubic feet per second or more, moving in a generally opposite direction than prior to the withdrawal, over a distance of more than one mile. To correct for periodic effects, including tidal influences and reservoir fluctuations, flow speed and direction shall be calculated by using annual average flow data to determine pre-withdrawal flows, and projected annual average flow assuming the maximum practical rate of withdrawal, to determine post-withdrawal flows.

(b) In an action brought by the State in the superior court of any county bordering such reservoir or river, any such withdrawal, and all steps taken to facilitate that withdrawal, shall be enjoined upon a showing that said public policy has been violated. If the withdrawal occurs, the withdrawing party shall be liable to the State for damages in an amount equal to the maximum value of the water withdrawn, as if that water were put to its most valuable theoretical use. In calculating such damages, the court shall take into account the continuing nature of the withdrawal, and the potential that the maximum value of water may increase in the future as a result of scarcity or other factors.

(c) It is the intent of this section to reach water in rivers and reservoirs which naturally flows from one point in this State to another, regardless of whether the point of withdrawal is located within or without the State. The courts of this State shall have jurisdiction over the parties withdrawing water or seeking a withdrawal contrary to this public policy, and over the subject matter of the action, notwithstanding the location of the point of withdrawal."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 395 **CHAPTER 568**

AN ACT TO ALLOW SUMMARY JUDGMENT FOR ABSOLUTE DIVORCE IN CERTAIN CIRCUMSTANCES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-10 reads as rewritten:

"*§ 50-10. Material facts found by judge or jury in divorce or annulment proceedings; when notice of trial not required; procedure same as ordinary civil actions.*

(a) The material facts in every complaint asking for a divorce or for an annulment shall be deemed to be denied by the defendant, whether the same shall be actually denied by pleading or not, and no judgment shall be given in favor of the plaintiff in any such complaint until such facts have been found by a judge or jury.

(b) Nothing herein shall require notice of trial to be given to a defendant who has not made an appearance in the action.

(c) The determination of whether there is to be a jury trial or a trial before the judge without a jury shall be made in accordance with G.S. 1A-1, Rules 38 and 39.

(d) The provisions of G.S. 1A-1, Rule 56, shall be applicable to actions for absolute divorce pursuant to G.S. 50-6, for the purpose of determining whether any genuine issue of material fact remains for trial by jury, but in the event the court determines that no genuine issue of material fact remains for trial by jury, the court must find the facts as provided herein. The court may enter a judgment of absolute divorce pursuant to the procedures set forth in G.S. 1A-1, Rule 56, finding all requisite facts from nontestimonial evidence presented by affidavit, verified motion or other verified pleading."

Sec. 2. This act becomes effective October 1, 1991, and any judgment of absolute divorce entered prior to that date on the basis of nontestimonial evidence pursuant to G.S. 1A-1, Rule 56, which is proper in all other respects, is valid and of full force and effect.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 396 **CHAPTER 569**

AN ACT TO REMOVE OBSOLETE LANGUAGE FROM CHAPTER 50 OF THE GENERAL STATUTES AND TO MOVE

CLARIFYING PROVISIONS TO A MORE APPROPRIATE PLACE IN CHAPTER 50.

The General Assembly of North Carolina enacts:

Section 1. G.S. 50-19(c) is repealed.

Sec. 2. G.S. 50-11(c) reads as rewritten:

"(c) A divorce obtained pursuant to G.S. 50-5.1 or G.S. 50-6 shall not affect the rights of either spouse with respect to any action for alimony or alimony *pendente lite* pending at the time the judgment for divorce is granted. ~~Except in case of divorce obtained with personal service on the defendant spouse, either within or without the State, upon the grounds of the adultery of the dependent spouse, a decree of absolute divorce~~ Furthermore, a judgment of absolute divorce shall not impair or destroy the right of a spouse to receive alimony ~~and~~ or alimony *pendente lite* or affect any other rights provided for such spouse under any judgment or decree of a court rendered before or at the time of ~~the rendering of~~ the judgment ~~for~~ of absolute divorce."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

H.B. 754 **CHAPTER 570**

AN ACT DIRECTING THE STATE BOARD OF EDUCATION TO DEVELOP EQUIPMENT STANDARDS FOR VOCATIONAL EDUCATION PROGRAMS.

The General Assembly of North Carolina enacts:

Section 1. Chapter 115C of the General Statutes is amended by adding a new section to read:

"*§ 115C-154.2. Vocational education equipment standards.*

The State Board of Education shall develop equipment standards for each vocational program level and shall assist local school administrative units in determining the adequacy of equipment for each vocational program available in each local school administrative unit.

The State Board shall also develop a plan to assure that minimum equipment standards for each program are met to the extent that State, local, and federal funds are available for that purpose. The State Board shall consider all reasonable and prudent means to meet these minimum equipment standards and to ensure a balanced vocational program for students in the public schools."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 965 **CHAPTER 571**

AN ACT TO AUTHORIZE THE DIRECTOR OF THE BUDGET TO CONTINUE EXPENDITURES FOR THE OPERATION OF GOVERNMENT AT THE LEVEL IN EFFECT ON JUNE 30, 1991.

The General Assembly of North Carolina enacts:

Section 1. Section 7 of Chapter 452 of the 1991 Session Laws reads as rewritten:

"Sec. 7. This act becomes effective July 1, 1991. This act expires ~~July 6, 1991.~~ July 13, 1991."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 4th day of July, 1991.

S.B. 257 **CHAPTER 572**

AN ACT TO AUTHORIZE THE DEPARTMENT OF HUMAN RESOURCES TO ISSUE PROVISIONAL LICENSES FOR DOMICILIARY HOMES AND TO ESTABLISH CERTAIN APPEALS TIME LIMITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 131D-2(b) reads as rewritten:

"(b) Licensure; inspections. --

(1) The Department of Human Resources shall inspect and license, under rules adopted by the Social Services Commission, all domiciliary homes for persons who are aged or mentally or physically disabled except those exempt in subsection (d) of this section. Licenses issued under the authority of this section shall be valid for one year from the date of issuance unless revoked earlier by the Secretary of Human Resources for failure to comply with any part of this section or any rules adopted hereunder. The Department may also issue a provisional license to a facility, pursuant to rules adopted by the Social Services Commission, for substantial failure to comply with the provisions of this section or rules promulgated pursuant to this section. Any facility wishing to contest the issuance of a provisional license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall

be filed within 30 days after the Department mails written notice of the issuance of the provisional license.

(2) Any individual or corporation that establishes, conducts, manages, or operates a facility subject to licensure under this section without a license is guilty of a misdemeanor, and upon conviction shall be punishable by a fine of not more than fifty dollars ($50.00) for the first offense and not more than five hundred dollars ($500.00) for each subsequent offense. Each day of a continuing violation after conviction shall be considered a separate offense.

(3) In addition, the Department may summarily suspend a license pursuant to ~~G.S. 150A-3(c)~~ G.S. 150B-3(c) whenever it finds substantial evidence of abuse, neglect, exploitation or any condition which presents an imminent danger to the health and safety of any resident of the home. Any facility wishing to contest summary suspension of a license shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of summary suspension to the licensee.

(4) Notwithstanding G.S. 8-53 or any other law relating to confidentiality of communications between physician and patient, in the course of an inspection conducted under subsection (b):

a. Department representatives may review any writing or other record concerning the admission, discharge, medication, care, medical condition, or history of any person who is or has been a resident of the facility being inspected, and

b. Any person involved in giving care or treatment at or through the facility may disclose information to Department representatives;

unless the resident objects in writing to review of his records or disclosure of such information.

The facility, its employees and any other person interviewed in the course of an inspection shall be immune from liability for damages resulting from disclosure of any information to the Department.

The Department shall not disclose:

a. Any confidential or privileged information obtained under this subsection unless the resident or his legal representative authorizes disclosure in writing or unless a court of competent jurisdiction orders disclosure, or

b. The name of anyone who has furnished information concerning a facility without that person's consent.

The Department shall institute appropriate policies and procedures to ensure that unauthorized disclosure does not occur. All confidential or privileged information obtained under this section and the names of persons providing such information shall be exempt from Chapter 132 of the General Statutes."

Sec. 2. G.S. 131D-2(h) reads as rewritten:

"(h) Suspension of admissions to domiciliary home:

(1) In addition to the administrative penalties described in subsection (b), the Secretary may suspend the admission of any new residents to a domiciliary home, where the conditions of the domiciliary home are detrimental to the health or safety of the residents. This suspension shall be for the period determined by the Secretary and shall remain in effect until the Secretary is satisfied that conditions or circumstances merit removing the suspension.

(2) In imposing a suspension under this subsection, the Secretary shall consider the following factors:

a. The degree of sanctions necessary to ensure compliance with this section and rules adopted hereunder; and

b. The character and degree of impact of the conditions at the home on the health or safety of its residents.

(3) The Secretary of Human Resources shall adopt rules to implement this subsection.

(4) Any facility wishing to contest a suspension of admissions shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 20 days after the Department mails a notice of suspension of admissions to the licensee."

Sec. 3. G.S. 131D-34(e) reads as rewritten:

"(e) Any facility wishing to contest a penalty shall be entitled to an administrative hearing as provided in the Administrative Procedure Act, Chapter 150B of the General Statutes. A petition for a contested case shall be filed within 30 days after the Department mails a notice of penalty to a licensee. One issue at the administrative hearing shall be the reasonableness of the amount of any civil penalty assessed by the Department. If a civil penalty is found to be unreasonable, the hearing officer may recommend that the penalty be modified accordingly."

Sec. 4. This act becomes effective October 1, 1991, and applies to licenses issued and appeals entered into on and after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 373 **CHAPTER 573**

AN ACT TO ADD FOUR MEMBERS TO THE NORTH CAROLINA BOARD OF SCIENCE AND TECHNOLOGY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-426.31 reads as rewritten:

"*§ 143B-426.31. North Carolina Board of Science and Technology; membership; organization; compensation; staff services.*

(a) The North Carolina Board of Science and Technology consists of the Governor, the Science Advisor to the Governor, and ~~13~~ 17 members appointed as follows: the Governor shall appoint one member from the University of North Carolina at Chapel Hill, one member from North Carolina State University at Raleigh, and two members from other components of the University of North Carolina, all nominated by the President of the University of North Carolina; one member from Duke University, nominated by the President of Duke University; one member from a private college or university, other than Duke University, in North Carolina, nominated by the President of the Association of Private Colleges and Universities; one member from the Research Triangle Institute, nominated by the executive committee of the board of that institute; one member from the Microelectronics Center of North Carolina, nominated by the executive committee of the board of that center; one member from the North Carolina Biotechnology Center, nominated by the executive committee of the board of that center; four ~~two~~ members from private industry in North ~~Carolina;~~ Carolina, at least one of whom shall be a professional engineer registered pursuant to Chapter 89C of the General Statutes or a person who holds at least a bachelors degree in engineering from an accredited college or university; and two members from public agencies in North Carolina. Two members shall be appointed by the General Assembly, one shall be appointed upon the recommendation of the President of the Senate, and one shall be appointed upon the recommendation of the Speaker of the House of Representatives in accordance with G.S. 120-121. The nominating authority for any vacancy on the Board among members appointed by the Governor shall submit to the Governor two nominations for each position to be filled, and the persons so nominated shall represent different disciplines.

(b) ~~The initial members~~ Members appointed to the Board by the General Assembly shall serve ~~for terms expiring June 30, 1983;~~

~~thereafter, their successors shall serve~~ for two-year terms beginning 1 July ~~1~~ of odd-numbered years. Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. The two members from public agencies shall serve for terms expiring at the end of the term of the Governor appointing them. ~~Of the remaining nine appointments by the Governor, five shall serve for four years expiring June 30, 1983, and four shall serve for two years expiring June 30, 1981; thereafter terms of all nine of these remaining members appointed by the Governor shall be for four years~~ The other 13 members appointed to the Board by the Governor shall serve for four-year terms, and until their successors are appointed and qualified. Of those 13 members, six shall serve for terms that expire on 30 June of years that follow by one year those years that are evenly divisible by four, and seven shall serve for terms that expire on 30 June of years that follow by three years those years that are evenly divisible by four. Any appointment to fill a vacancy on the Board created by the resignation, dismissal, ~~death~~ death, or disability of a member shall be for the balance of the unexpired term.

(c) The Governor shall serve as chairman of the Board. The vice chairman of the Board shall be designated by the Governor from among the members of the Board. The Science Advisor to the Governor shall serve as executive director of the Board. The Secretary of Administration or his designee shall serve as secretary to the Board.

(d) The Governor may remove any member of the Board from office in accordance with the provisions of G.S. 143B-16.

(e) Members of the Board who are employees of State agencies or institutions shall receive subsistence and travel allowances authorized by G.S. 138-6. Legislative members of the Board shall receive subsistence and travel allowances authorized by G.S. 120-3.1.

(f) A majority of the Board constitutes a quorum for the transaction of business.

(g) The Secretary of ~~Economic and Community Development~~ Administration shall provide all clerical and other services required by the Board."

Sec. 2. Of the initial members of the North Carolina Board of Science and Technology that are added to the Board by this act, two shall be appointed by the Governor to serve for two-year terms that expire on 30 June 1993 and two shall be appointed by the Governor to serve for four-year terms that expire on 30 June 1995.

Sec. 3. This act shall not be construed to obligate the General Assembly to make any appropriation to implement the provisions of this act. The North Carolina Board of Science and Technology and the Department of Administration shall implement the provisions of

this act from funds otherwise appropriated or available to the Board or to the Department.

Sec. 4. This act becomes effective 1 July 1991.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 397 **CHAPTER 574**

AN ACT TO INCREASE AND MAKE UNIFORM THE FEES FOR COPYING A FILED DOCUMENT, COMPARING A COPY TO THE ORIGINAL FILED DOCUMENT, AND CERTIFYING A DOCUMENT UNDER THE BUSINESS CORPORATION ACT, THE NONPROFIT CORPORATION ACT, AND THE REVISED UNIFORM LIMITED PARTNERSHIP ACT.

The General Assembly of North Carolina enacts:

Section 1. G.S. 55-1-22(c) reads as rewritten:

"(c) The Secretary of State shall collect the following fees for copying, comparing, and certifying ~~the~~ a copy of any filed document relating to a domestic or foreign corporation:

(1) ~~Fifty cents ($.50)~~ One dollar ($1.00) a page for copying or comparing a copy to the original; and

(2) Five dollars ($5.00) for the certificate."

Sec. 2. G.S. 55A-77(a) reads as rewritten:

"(a) The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1)	For filing articles of incorporation (G.S. 55A-7),	$10.00
(2)	For filing an application of a foreign corporation for a certificate of authority to conduct affairs in this State and issuing a certificate of authority (G.S. 55A-61),	10.00
(3)	For filing an application of a foreign corporation for an amended certificate of authority to conduct affairs in this State and issuing an amended certificate of authority (G.S. 55A-71),	10.00
(4)	For filing articles of amendment (G.S. 55A-36),	10.00
(5)	For filing a copy of an amendment to the articles of incorporation of a foreign corporation holding a certificate of authority to conduct affairs in this State	

(G.S. 55A-69),..... 10.00

(6) For filing articles of merger or consolidation (G.S. 55A-41),..... 10.00

(7) For filing a copy of articles of merger of a foreign corporation holding a certificate of authority to conduct affairs in this State (G.S. 55A-70),..... 10.00

(8) For receiving any service of process as statutory agent of a corporation (G.S. 55A-13, 55A-68, 55A-75), ... 5.00
which amount may be recovered from the adverse party as taxable costs by the party to the action or proceeding causing such service to be made if such party prevails in the action or proceeding.

(9) For filing a notice of resignation of a registered agent (G.S. 55A-12(d)),..... 5.00

(10) For filing a statement of the change of registered office or registered agent of a domestic or foreign corporation (G.S. 55A-65, 55A-75, 55A-12), ... 5.00

(11) For filing an application for withdrawal of a foreign corporation and issuing a certificate of withdrawal (G.S. 55A-72),.....$10.00

(12) Repealed by Session Laws 1983, c. 713, s. 42, effective August 1, 1983.

(13) For filing articles of dissolution (G.S. 55A-48),..... 10.00

(14) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a corporation (G.S. 55A-4(c)):
~~for the first page thereof.....~~ ~~1.00~~
for each ~~additional~~ page,.....~~.40~~ 1.00
for affixing his certificate and official seal thereto,.....~~2.00~~5.00

(15) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a corporation: for each page,.....~~.20~~ 1.00
for affixing his certificate and official seal thereto,.....~~2.00~~5.00

(16) For filing an application to reserve or register a corporate name and for filing an application to renew such a registration

(G.S. 55A-10(e) and (f)), ... 10.00

(17) For filing any other document not herein specifically provided for, ... 10.00."

Sec. 3. G.S. 59-1106 reads as rewritten:

"*§ 59-1106. Fees.*

The Secretary of State shall collect the following fees and remit them to the State Treasurer for the use of the State:

(1) For filing a certificate of limited partnership (G.S. 59-201), ...$50.00

(2) For filing a certificate of amendment (G.S. 59-202; 59-905), ... 25.00

(3) For filing a certificate of cancellation (G.S. 59-203; 59-906), ... 25.00

(4) For filing an application for reservation of name (G.S. 59-104(a)), ... 10.00

(5) For filing a transfer of name (G.S. 59-104(d)), ... 10.00

(6) For filing an application for registration as foreign limited partnership (G.S. 59-502), ... 50.00

(7) For preparing and furnishing a copy of any document, instrument or paper filed or recorded relating to a limited partnership (G.S. 59-206(c))

~~for the first page thereof.....~~ ~~1.00~~

For each ~~additional~~ page, ...~~.40~~ 1.00

For affixing his certificate and official seal thereto, ...~~2.00~~ 5.00

(8) For comparing a copy furnished to him of any document, instrument or paper filed or recorded relating to a limited partnership

For each page, ...~~.20~~ 1.00

(9) For filing any other document not herein specifically provided for, ... 10.00."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 424 **CHAPTER 575**

AN ACT TO EXPAND THE AUTHORITY OF THE COURTS TO REQUIRE PAYMENT OF ATTORNEYS' FEES BY PARENTS WHO ARE FINANCIALLY ABLE TO PAY AND TO PROVIDE A PILOT PROGRAM EXPANDING THE AUTHORITY OF THE

ADMINISTRATIVE OFFICE OF THE COURTS TO CONTRACT FOR THE SERVICES OF PRIVATE ATTORNEYS FOR SPECIALIZED REPRESENTATION OF INDIGENTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-588 reads as rewritten:

"*§ 7A-588. Payment of court appointed attorney or guardian ad litem.*

An attorney or guardian *ad litem* appointed pursuant to G.S. 7A-584, 7A-586 or 7A-587 of this ~~Article or~~ Article, pursuant to any other provision of the Juvenile ~~Code~~ Code, or pursuant to G.S. 7A-289.23 shall be paid a reasonable fee fixed by the court in the same manner as fees for attorneys appointed in cases of indigency or by direct engagement for specialized guardian *ad litem* services through the Administrative Office of the Courts. The judge may require payment of the attorney or guardian *ad litem* fee from a person other than the juvenile as provided in G.S. 7A-450.1, 7A-450.2 and 7A-450.3. In no event shall the parent or guardian be required to pay the fees for an appointed attorney or guardian *ad litem* in an abuse, neglect, or dependency proceeding unless the juvenile has been adjudicated to be abused, neglected, or ~~dependent.~~ dependent, or, in a proceeding to terminate parental rights, unless the parent's rights have been terminated. A person who does not comply with the court's order of payment may be punished for contempt as provided in G.S. 5A-21."

Sec. 2. The Director of the Administrative Office of the Courts is authorized to enact a pilot program, in accordance with the provisions of this section, in three judicial districts selected by the Director with the approval of the senior resident superior court judge and the chief district court judge of each district. To facilitate the processing of all cases, the Director shall, in the three pilot areas, engage the services of a particular attorney or attorneys to provide specialized representation to indigent persons on a full-time or part-time basis. The Administrative Office of the Courts shall file a written evaluation of the pilot program with the General Assembly on or before May 1, 1993. The pilot program shall terminate on June 30, 1993.

Sec. 3. Section 1 of this act becomes effective October 1, 1991 and applies to cases filed on or after that date. Section 2 of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 449 **CHAPTER 576**

AN ACT TO REQUIRE OPERATING PERMITS FOR COMMUNITY WATER SYSTEMS REGULATED UNDER THE NORTH CAROLINA DRINKING WATER ACT AND TO AUTHORIZE THE COLLECTION OF FEES FOR SUCH PERMITS.

The General Assembly of North Carolina enacts:

Section 1. Article 10 of Chapter 130A of the General Statutes is amended by adding a new section to read:

"*§ 130A-328. Community water system operating permit and permit fee.*

(a) No person shall operate a community water system who has not been issued an operating permit by the Department. A community water system operating permit shall be valid for one year from the date of issue unless suspended or revoked by the Department for cause. The Commission shall adopt rules concerning permit issuance and renewal and permit suspension and revocation.

(b) The following fees are imposed for the issuance or renewal of a permit to operate a community water system; the fees are based on the number of persons served by the system:

Number of Persons Served	Fee
100 or fewer	$150
More than 100 but no more than 500	$175
More than 500 but no more than 3300	$300
More than 3300 but no more than 5000	$450
More than 5000 but no more than 10,000	$550
More than 10,000 but no more than 50,000	$650
More than 50,000	$850

All fees collected under this section shall be credited to the General Fund and shall be used, subject to appropriation by the General Assembly to the Department, to defray the cost of administering and enforcing this Article."

Sec. 2. This act becomes effective January 1, 1992, except that the authorization of the Commission for Health Services to adopt rules to implement this act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 585 **CHAPTER 577**

AN ACT TO AMEND THE CHARTER OF THE CITY OF DURHAM TO CHANGE THE MANNER IN WHICH CORNER LOT RELIEF FROM SPECIAL ASSESSMENTS FOR WATER

AND SEWER PROJECTS IS CALCULATED; TO REPEAL THE MERCHANT'S DISCOUNT UNDER THE MOORESVILLE ROOM OCCUPANCY TAX; AND TO AUTHORIZE RUTHERFORD COUNTY TO LEVY A ROOM OCCUPANCY AND TOURISM DEVELOPMENT TAX.

The General Assembly of North Carolina enacts:

Section 1. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is further amended by deleting from the second sentence of sub-subsection 77(14)(c) the following:

"where there is a water main or sewer already laid on the intersecting street on which the lot abuts and by which the lot is or can be served, no assessment shall be made against the lot for the second water main or sewer for any part of the frontage of"

and by substituting the following:

"no assessment shall be made against the long side of the lot abutting on the intersecting streets for any part of the frontage of such longer side of".

Sec. 2. The Charter of the City of Durham, being Chapter 671 of the 1975 Session Laws, as amended, is further amended by deleting from the second sentence of sub-subsection 77(14)(c) the following:

"where there is a water main or sewer already laid on the intersecting street on which the lot abuts and by which the lot is or can be served, no assessment shall be made against the lot for the second water main or sewer for any part of the frontage of"

and by substituting the following:

"no assessment shall be made against the long side of the lot abutting on the intersecting streets for any part of the frontage of such longer side of".

Sec. 3. Sections 1 and 2 of this act do not apply to any corner lot (i) for which an assessment has previously been confirmed against the full length of the longer side of the lot abutting on the intersecting streets for any water mains, storm sewer, sanitary sewer, pumping station, force main or sanitary sewer outfall; or (ii) where the sides of the lot abutting on the intersecting streets are identical in length. As to the exceptions stated in this section, sub-subsection 77(14)(c) of the Charter of the City of Durham shall continue in full force and effect as it existed immediately prior to the effective date of this act.

Sec. 4. Subsection (b) of Section 1 of Chapter 296 of the 1991 Session Laws reads as rewritten:

"(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of

the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the town. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The town shall design, print, and furnish to all appropriate businesses and persons in the town the necessary forms for filing returns and instructions to ensure the full collection of the tax. ~~An operator of a business who collects the occupancy tax levied under this section may deduct from the amount remitted to the town a discount of three percent (3%) of the amount collected.~~"

Sec. 5. Rutherford occupancy tax. (a) Authorization and scope. The Rutherford County Board of Commissioners may by resolution, after not less than ten days' public notice and after a public hearing held pursuant thereto, levy a room occupancy tax not to exceed six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(3). This tax is in addition to any State or local sales tax. This tax does not apply to accommodations furnished by nonprofit charitable, educational, or religious organizations.

(b) Collection. Every operator of a business subject to the tax levied under this section shall, on and after the effective date of the levy of the tax, collect the tax. This tax shall be collected as part of the charge for furnishing a taxable accommodation. The tax shall be stated and charged separately from the sales records, and shall be paid by the purchaser to the operator of the business as trustee for and on account of the county. The tax shall be added to the sales price and shall be passed on to the purchaser instead of being borne by the operator of the business. The county shall design, print, and furnish to all appropriate businesses and persons in the county the necessary forms for filing returns and instructions to ensure the full collection of the tax.

(c) Administration. The county shall administer a tax levied under this section. A tax levied under this section is due and payable to the county finance officer in monthly installments on or before the 15th day of the month following the month in which the tax accrues. Every person, firm, corporation, or association liable for the tax shall, on or before the 15th day of each month, prepare and render a return on a form prescribed by the county. The return shall state the total gross receipts derived in the preceding month from rentals upon which the tax is levied.

A return filed with the county finance officer under this section is not a public record as defined by G.S. 132-1 and may not be disclosed except as required by law.

(d) Penalties. A person, firm, corporation, or association who fails or refuses to file the return required by this section shall pay a penalty of ten dollars ($10.00) for each day's omission. In case of failure or refusal to file the return or pay the tax for a period of thirty days after the time required for filing the return or for paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due in addition to any other penalty, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The board of commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this subsection.

Any person who willfully attempts in any manner to evade a tax imposed under this section or who willfully fails to pay the tax or make and file a return shall, in addition to all other penalties provided by law, be guilty of a misdemeanor and shall be punishable by a fine not to exceed one thousand dollars ($1,000), imprisonment not to exceed six months, or both.

(e) Distribution and use of tax revenue. Rutherford County shall, on a quarterly basis, remit the net proceeds of the occupancy tax to the Rutherford Tourism Development Authority. The Authority may spend funds remitted to it under this subsection only to promote travel, tourism, retirement, and conventions in Rutherford County. As used in this subsection, "net proceeds" means gross proceeds less an amount not to exceed ten percent (10%) of the gross proceeds to cover the cost to the county of administering and collecting the tax, as determined by the finance officer.

(f) Effective date of levy. A tax levied under this section shall become effective on the date specified in the resolution levying the tax. That date must be the first day of a calendar month, however, and may not be earlier than the first day of the second month after the date the resolution is adopted.

(g) Repeal. A tax levied under this section may be repealed by a resolution adopted by the Rutherford County Board of Commissioners. Repeal of a tax levied under this section shall become effective on the first day of a month and may not become effective until the end of the fiscal year in which the repeal resolution was adopted. Repeal of a tax levied under this section does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 6. Rutherford Tourism Development Authority. (a) Creation. When the Rutherford County Board of Commissioners adopts a resolution levying a room occupancy tax under Section 5 of this act, it shall also adopt a resolution creating a county Tourism Development Authority, which shall be a public authority under the Local Government Budget and Fiscal Control Act. The board of commissioners shall designate one member of the Authority as chair and shall determine the compensation, if any, to be paid to members of the Authority.

The Authority shall meet at the call of the chair and shall adopt rules of procedure to govern its meetings. The Finance Officer for Rutherford County shall be the ex officio finance officer of the Authority. Upon approval of the Authority, the Economic Development Commission may provide administrative and coordinating support to the Authority.

(b) Membership; Terms of Office. The membership of the Authority and their terms of office shall be as follows:

(1) Three members of the Economic Development Commission, or their designees, appointed by the Board of the Economic Development Commission. These appointees shall serve a term of office equal to the term of office of members of the Economic Development Commission.

(2) A County Commissioner, appointed by the Rutherford County Board of Commissioners, to serve as an ex officio, nonvoting member.

(3) Three owners or operators of hotels, motels, or other taxable accommodations, one appointed by each chamber of commerce in Rutherford County. The initial terms of each of these appointees shall be determined by the Rutherford County Commissioners as follows: one one-year term; one two-year term; and one three-year term. Thereafter, the appointees shall serve for a term of three years.

(4) Three individuals involved in tourist-related businesses who have demonstrated an interest in tourism development and who may or may not own hotels, motels, or other taxable accommodations, appointed as follows: one by each chamber of commerce in Rutherford County. The initial terms of each of these appointees shall be determined by the Rutherford County Commissioners as follows: one one-year term; one two-year term; and one three-year term. Thereafter, the appointees shall serve for a term of three years.

In the event any of the chambers of commerce in Rutherford County consolidate, the resulting chamber shall assume the appointing authority of the consolidated chambers.

(c) Duties. The Authority shall promote travel, tourism, retirement, and conventions in the county.

(d) Reports. The Authority shall report quarterly and at the close of the fiscal year to the board of commissioners on its receipts and expenditures for the preceding quarter and for the year in such detail as the board may require.

Sec. 7. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 742 **CHAPTER 578**

AN ACT TO AMEND THE REGULATION OF MEDICAL DEVICES BY THE STATE BOARD OF PHARMACY.

The General Assembly of North Carolina enacts:

Section 1. G.S. 90-85.3(e) reads as rewritten:

"(e) 'Device' means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, ~~that is required by law to be dispensed only pursuant to a prescription order,~~ whose label or labeling bears the statement 'Caution: federal law requires dispensing by or on the order of a physician.' The term does not include:

(1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;

(2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 124 **CHAPTER 579**

AN ACT TO AMEND THE WATER SUPPLY WATERSHED PROTECTION STATUTES TO CLARIFY LOCAL AND STATE POWERS AND DUTIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143-214.5 reads as rewritten:

"*§ 143-214.5. Water supply watershed protection.*

(a) Policy Statement. -- This section provides for a cooperative program of water supply watershed management and protection to be administered by local governments consistent with minimum statewide management requirements established by the Commission. If a local government fails to adopt a water supply watershed protection program or does not adequately carry out its responsibility to enforce the minimum water supply watershed management requirements of its approved program, the Commission shall administer and enforce the minimum statewide requirements. The reduction of agricultural nonpoint source discharges shall be accomplished primarily through the Agriculture Cost Share Program for Nonpoint Source Pollution Control.

(b) Development and Adoption of Water Supply Watershed Classifications and Management Requirements. -- The Commission shall adopt rules for the classification of water supply watersheds and that establish minimum statewide water supply watershed protection requirements applicable to each classification ~~for the protection of~~ to protect surface water supplies ~~through~~ by (i) controlling development density, (ii) ~~minimum~~ providing for performance-based ~~water supply watershed management requirements applicable to each classification.~~ alternatives to development density controls that are based on sound engineering principles, or (iii) a combination of both (i) and (ii). The Commission may designate water supply watersheds or portions thereof as critical water supply watersheds and impose management requirements that are more stringent than the minimum statewide water supply watershed management requirements. The Commission may adopt rules that require that any permit issued by a local government for a development or construction activity conducted by that local government within a designated water supply watershed be approved by the Department prior to issuance. Any variance from the minimum statewide water supply watershed management requirements must be approved by the Commission prior to the issuance of a permit by a local government. Except as provided by G.S. 153A-347 and G.S. 160A-392, the power to implement this section with respect to development or construction activities that are conducted by State agencies is vested exclusively in the Commission.

(c) Classification of Water Supply Watersheds. -- The Commission shall assign to each water supply watershed in the State the appropriate classification with the applicable minimum ~~protective~~ management requirements. The Commission may reclassify water supply watersheds as necessary to protect future water supplies or improve

protection at existing water supplies. A local government shall not be required to submit a revised water supply watershed protection program to the Commission earlier than 270 days after it receives notice of a reclassification from the Commission.

(d) Mandatory Local Programs. -- The Department shall assist local governments to develop water supply watershed protection programs ~~which~~ that comply with this section. Local government compliance programs shall include an implementing local ordinance and shall provide for maintenance, inspection, and enforcement procedures. As part of its assistance to local governments, the Commission shall approve and make available a model local water supply watershed management and protection ordinance. The model management and protection ordinance adopted by the Commission shall, at a minimum, include as options (i) controlling development density, (ii) providing for performance-based alternatives to development density controls ~~which~~ that are based on sound engineering principles, and (iii) a combination of both (i) and (ii). ~~It shall be the responsibility of local governments to~~ Local governments shall administer and enforce the minimum management requirements. Every local government ~~which~~ that has within its jurisdiction all or a portion of a water supply watershed shall submit a local water supply watershed management and protection ordinance to the Commission for approval. Local governments may adopt such ordinances pursuant to their general police power, power to regulate the subdivision of land, zoning power, or any combination of such powers. In adopting a local ordinance that imposes water supply watershed management requirements that are more stringent than those adopted by the Commission, a county must comply with the notice provisions of G.S.153A-343 and a municipality must comply with the notice provisions of G.S. 160A-384. This section shall not be construed to affect the validity of any local ordinance adopted for the protection of water supply watersheds prior to completion of the review of the ordinance by the Commission or prior to the assumption by the Commission of responsibility for a local water supply watershed protection program. Local governments may create or designate agencies to administer and enforce such programs. The Commission shall approve a local program only if it determines that the requirements of the program equal or exceed the minimum statewide water supply watershed management requirements adopted pursuant to this section.

(d1) A local ordinance adopted to implement the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities shall be no more restrictive than those adopted by the Commission. In adopting minimum statewide water supply watershed management requirements applicable to

agriculture activities, the Commission shall consider the policy regarding agricultural nonpoint source discharges set out in subsection (a) of this section. The Commission may by rule designate another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities. If the Commission designates another State agency to administer the minimum statewide water supply watershed management requirements applicable to agriculture and silviculture activities, management requirements adopted by local governments shall not apply to such activities.

(e) Assumption of Local Programs. -- The Commission shall assume responsibility for water supply watershed ~~protection whenever~~ protection, within all or the affected portion of a water supply watershed, if a local government fails to adopt a program ~~which~~ that meets the requirements of this section or whenever a local government fails to adequately administer and enforce the provisions of its program. The Commission shall not assume responsibility for an approved local water supply watershed protection program until it or its designee notifies the local government in writing by certified mail, return receipt requested, of local program deficiencies, recommendations for changes and improvements in the local program, and the deadline for compliance. The Commission shall allow a local government a minimum of 120 days to bring its program into compliance. The Commission shall order assumption of ~~a~~ an approved local program if it finds that the local government has made no substantial progress toward compliance. The Commission may make such finding at any time between 120 days and 365 days after receipt of notice under this subsection by the local government, with no further notice. Proceedings to review such orders by the Commission shall be conducted by the superior court pursuant to Article 4 of Chapter 150B of the General Statutes based on the agency record submitted to the Commission by the Secretary.

(f) State Enforcement Authority. -- The Commission may take any appropriate preventive or remedial enforcement action authorized by this Part against any person who violates any minimum statewide water supply watershed management ~~requirement,~~ requirement. ~~whenever a local government has unlawfully issued a permit or has failed to take appropriate enforcement action.~~

(g) Civil Penalties. -- A local government ~~which~~ that fails to adopt a local water supply watershed protection program as required by this section or willfully fails to administer or enforce the provisions of its program in substantial compliance with the minimum statewide water supply watershed management requirements shall be subject to a civil penalty pursuant to G.S. 143-215.6A(e). In any area of the State

~~which~~ that is not covered by an approved local water supply watershed protection program, any person who violates or fails to act in accordance with any ~~statewide~~ minimum statewide water supply watershed management requirement or more stringent management requirement adopted by the Commission for a critical water supply watershed established pursuant to this section shall be subject to a civil penalty as specified in G.S. 143-215.6A(a)(7).

(h) Planning Grants to Local Governments. -- The Secretary may make annual grants to local governments for the purpose of assisting in the development of local water supply watershed protection programs. The Secretary shall develop and administer generally applicable criteria under which local governments may qualify for such assistance. Such criteria shall give priority to local governments ~~which~~ that are not then administering zoning ordinances in affected water supply watershed areas."

Sec. 2. G.S. 143-215.6A(e) reads as rewritten:

"(e) Consistent with G.S. 143B-282.1, a civil penalty of not more than ten thousand dollars ($10,000) per month may be assessed by the Commission against any local government ~~which~~ that fails to adopt a local water supply watershed protection program as required by G.S. 143-214.5, or willfully fails to administer or enforce ~~a water supply watershed protection~~ the provisions of its program ~~as required by G.S. 143-214.5.~~ in substantial compliance with the minimum statewide water supply watershed management requirements. No such penalty shall be imposed against a local government until the Commission has assumed the responsibility for administering and enforcing the local water supply watershed protection program. Civil penalties shall be imposed pursuant to a uniform schedule adopted by the Commission. The schedule of civil penalties shall be based on acreage and other relevant cost factors and shall be designed to recoup the costs of administration and enforcement."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 134 **CHAPTER 580**

AN ACT TO CLARIFY THE POWER OF REGIONAL SOLID WASTE MANAGEMENT AUTHORITIES TO REGULATE THE FLOW OF NONHAZARDOUS SOLID WASTE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 153A-427(a)(24) reads as rewritten:

"(24) To require that any and all (i) solid waste ~~and recyclable materials~~ generated within the authority's service area and (ii) recyclable materials generated within the authority's service area and transferred to the authority be separated and delivered to specific locations and facilities provided that if a private landfill shall be substantially affected by such requirement then the regional solid waste management authority shall be required to give the operator of the affected landfill at least two years written notice prior to the effective date of the requirement; and".

Sec. 2. G.S. 153A-421 is amended by adding a new subsection to read:

"(d) As used in G.S. 153A-427(a)(24), the term 'transferred' means placed at or delivered to any (i) place normally and customarily used by the authority for the collection of solid waste, (ii) other place agreed upon by the generator or owner of recyclable materials and the authority, or (iii) facility owned, operated, or designated by the authority."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 165 **CHAPTER 581**

AN ACT TO ENCOURAGE THE MAINTENANCE OF AFFORDABLE HOUSING STOCK.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-443 reads as rewritten:

"§ *160A-443. Ordinance authorized as to repair, closing and demolition; order of public officer.*

Upon the adoption of an ordinance finding that dwelling conditions of the character described in G.S. 160A-441 exist within a city, the governing body of the city is hereby authorized to adopt and enforce ordinances relating to dwellings within the city's territorial jurisdiction that are unfit for human habitation. These ordinances shall include the following provisions:

(1) That a public officer be designated or appointed to exercise the powers prescribed by the ordinance.

(2) That whenever a petition is filed with the public officer by a public authority or by at least five residents of the city charging that any dwelling is unfit for human habitation or whenever it appears to the public officer (on his own motion) that any dwelling is unfit for human habitation, the

public officer shall, if his preliminary investigation discloses a basis for such charges, issue and cause to be served upon the owner of and parties in interest in such dwellings a complaint stating the charges in that respect and containing a notice that a hearing will be held before the public officer (or his designated agent) at a place within the county in which the property is located fixed not less than 10 days nor more than 30 days after the serving of the complaint; that the owner and parties in interest shall be given the right to file an answer to the complaint and to appear in person, or otherwise, and give testimony at the place and time fixed in the complaint; and that the rules of evidence prevailing in courts of law or equity shall not be controlling in hearings before the public officer.

(3) That if, after notice and hearing, the public officer determines that the dwelling under consideration is unfit for human habitation, he shall state in writing his findings of fact in support of that determination and shall issue and cause to be served upon the owner thereof an order,

a. If the repair, alteration or improvement of the dwelling can be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified, to repair, alter or improve the dwelling in order to render it fit for human habitation or to vacate and close the dwelling as a human habitation; or

b. If the repair, alteration or improvement of the dwelling cannot be made at a reasonable cost in relation to the value of the dwelling (the ordinance of the city may fix a certain percentage of this value as being reasonable), requiring the owner, within the time specified in the order, to remove or demolish such dwelling.

(4) That, if the owner fails to comply with an order to repair, alter or improve or to vacate and close the dwelling, the public officer may cause the dwelling to be repaired, altered or improved or to be vacated and closed; that the public officer may cause to be posted on the main entrance of any dwelling so closed, a placard with the following words: 'This building is unfit for human habitation; the use or occupation of this building for human habitation is prohibited and unlawful.' Occupation of a building so posted shall constitute a misdemeanor.

(5) That, if the owner fails to comply with an order to remove or demolish the dwelling, the public officer may cause such dwelling to be removed or demolished. The duties of the public officer set forth in subdivisions (4) and (5) shall not be exercised until the governing body shall have by ordinance ordered the public officer to proceed to effectuate the purpose of this Article with respect to the particular property or properties which the public officer shall have found to be unfit for human habitation and which property or properties shall be described in the ordinance. No such ordinance shall be adopted to require demolition of a dwelling until the owner has first been given a reasonable opportunity to bring it into conformity with the housing code. This ordinance shall be recorded in the office of the register of deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index.

(5a) If the governing body shall have adopted an ordinance ordering a dwelling to be repaired or vacated and closed, as provided in subdivision (3)a., and if the owner has vacated and closed such dwelling and kept such dwelling vacated and closed for a period of one year pursuant to the ordinance, then if the governing body shall find that the owner has abandoned the intent and purpose to repair, alter or improve the dwelling in order to render it fit for human habitation and that the continuation of the dwelling in its vacated and closed status would be inimical to the health, safety, morals and welfare of the municipality in that the dwelling would continue to deteriorate, would create a fire and safety hazard, would be a threat to children and vagrants, would attract persons intent on criminal activities, would cause or contribute to blight and the deterioration of property values in the area, and would render unavailable property and a dwelling which might otherwise have been made available to ease the persistent shortage of decent and affordable housing in this State, then in such circumstances, the governing body may, after the expiration of such one year period, enact an ordinance and serve such ordinance on the owner, setting forth the following:

a. If it is determined that the repair of the dwelling to render it fit for human habitation can be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require that

the owner either repair or demolish and remove the dwelling within 90 days; or

b. If it is determined that the repair of the dwelling to render it fit for human habitation cannot be made at a cost not exceeding fifty percent (50%) of the then current value of the dwelling, the ordinance shall require the owner to demolish and remove the dwelling within 90 days.

This ordinance shall be recorded in the Office of the Register of Deeds in the county wherein the property or properties are located and shall be indexed in the name of the property owner in the grantor index. If the owner fails to comply with this ordinance, the public officer shall effectuate the purpose of the ordinance.

This subdivision only applies to municipalities located in counties which have a population in excess of 163,000 by the last federal census.

(6) That the amount of the cost of repairs, alterations or improvements, or vacating and closing, or removal or demolition by the public officer shall be a lien against the real property upon which the cost was incurred, which lien shall be filed, have the same priority, and be collected as the lien for special assessment provided in Article 10 of this Chapter. If the dwelling is removed or demolished by the public officer, he shall sell the materials of the dwelling, and any personal property, fixtures or appurtenances found in or attached to the dwelling, and shall credit the proceeds of the sale against the cost of the removal or demolition and any balance remaining shall be deposited in the superior court by the public officer, shall be secured in a manner directed by the court, and shall be disbursed by the court to the persons found to be entitled thereto by final order or decree of the court. Nothing in this section shall be construed to impair or limit in any way the power of the city to define and declare nuisances and to cause their removal or abatement by summary proceedings, or otherwise.

(7) If any occupant fails to comply with an order to vacate a dwelling, the public officer may file a civil action in the name of the city to remove such occupant. The action to vacate the dwelling shall be in the nature of summary ejectment and shall be commenced by filing a complaint naming as parties-defendant any person occupying such dwelling. The clerk of superior court shall issue a

summons requiring the defendant to appear before a magistrate at a certain time, date and place not to exceed 10 days from the issuance of the summons to answer the complaint. The summons and complaint shall be served as provided in G.S. 42-29. The summons shall be returned according to its tenor, and if on its return it appears to have been duly served, and if at the hearing the public officer produces a certified copy of an ordinance adopted by the governing body pursuant to subdivision (5) authorizing the officer to proceed to vacate the occupied dwelling, the magistrate shall enter judgment ordering that the premises be vacated and that all persons be removed. The judgment ordering that the dwelling be vacated shall be enforced in the same manner as the judgment for summary ejectment entered under G.S. 42-30. An appeal from any judgment entered hereunder by the magistrate may be taken as provided in G.S. 7A-228, and the execution of such judgment may be stayed as provided in G.S. 7A-227. An action to remove an occupant of a dwelling who is a tenant of the owner may not be in the nature of a summary ejectment proceeding pursuant to this paragraph unless such occupant was served with notice at least 30 days before the filing of the summary ejectment proceeding that the governing body has ordered the public officer to proceed to exercise his duties under paragraphs 4 and 5 of this section to vacate and close or remove and demolish the dwelling.

(8) That whenever a determination is made pursuant to subdivision (3) of this section that a dwelling must be vacated and closed, or removed or demolished, under the provisions of this section, notice of the order shall be given by first-class mail to any organization involved in providing or restoring dwellings for affordable housing that has filed a written request for such notices. A minimum period of 45 days from the mailing of such notice shall be given before removal or demolition by action of the public officer, to allow the opportunity for any organization to negotiate with the owner to make repairs, lease, or purchase the property for the purpose of providing affordable housing. The public officer or clerk shall certify the mailing of the notices, and the certification shall be conclusive in the absence of fraud. Only an organization that has filed a written request for such notices may raise the issue of failure to mail such notices, and the sole

remedy shall be an order requiring the public officer to wait 45 days before causing removal or demolition."

Sec. 2. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 182 **CHAPTER 582**

AN ACT TO REQUIRE THE NORTH CAROLINA HOUSING FINANCE AGENCY TO EXPAND ITS USE OF THE MULTIFAMILY RENTAL ASSISTANCE FUND TO AID IN THE PREVENTION OF HOMELESSNESS.

The General Assembly of North Carolina enacts:

Section 1. The North Carolina Housing Finance Agency shall establish a demonstration program within one or more counties and within funds available through the Agency's Multifamily Rental Assistance Fund, setting up a security and utility deposit revolving loan fund to enable people in shelters and transitional housing projects to borrow utility and security deposits necessary to enable them to move into permanent housing. The Agency shall adopt rules to administer this fund, including rules specifying the eligibility requirements for loans, the number of times per year the same person may borrow from this fund, the limit, if any, on the amount that may be borrowed, and the specific requirements with regards to repayment.

Sec. 2. The Agency shall file a report on the demonstration program, including any recommendations on the continuation or modification of the program, with the Joint Legislative Commission on Governmental Operations by January 31, 1993.

Sec. 3. This act becomes effective July 1, 1991.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 233 **CHAPTER 583**

AN ACT TO MODIFY THE MEMBERSHIP OF THE STANLY COUNTY AIRPORT AUTHORITY.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 419, Session Laws of 1971, as amended by Chapter 238, Session Laws of 1983, and as further amended by Chapter 929 of the 1987 Session Laws reads as rewritten:

"Sec. 2. The Airport Authority shall consist of ~~six~~ five members who shall be appointed to staggered terms of four years by the Stanly

County Board of Commissioners. All of the members shall be residents of the County. The terms of the ~~five~~ four appointed members of the Airport Authority shall be as follows: two members serving terms expiring March 31, ~~1989,~~ 1993 and ~~three~~ two members serving terms expiring March 31, ~~1991,~~ 1995. Thereafter, all terms shall be for four years. Each of the members and their successors so appointed shall take and subscribe before the Clerk of the Superior Court of Stanly County, an oath of office and file same with the Stanly County Board of Commissioners. Upon the occurrence of any vacancy on said Airport Authority, said vacancy shall be filled within 60 days after notice thereof at a regular meeting of the Board of County Commissioners. One of the ~~six~~ five members shall be a county commissioner, whose term on the Airport Authority shall run concurrently with that member's term as county commissioner. In the case of the member of the Stanly County Board of Commissioners serving as a voting member of the said Airport Authority, such membership shall not constitute double office holding within the meaning of Article VI, Sec. 9 of the Constitution of North Carolina, but instead is service ex officio."

Sec. 2. This act becomes effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 308 **CHAPTER 584**

AN ACT TO ALLOW LOCAL GOVERNMENTAL UNITS TO CONTRACT WITH FINANCIAL INSTITUTIONS FOR RECEIPT OF PAYMENTS OF DELINQUENT PROPERTY TAXES AND INTEREST AND TO AUTHORIZE LOCAL GOVERNMENTS TO ALLOW PAYMENT OF PROPERTY TAXES BY CREDIT CARD.

The General Assembly of North Carolina enacts:

Section 1. G.S. 105-321(e) reads as rewritten:

"(e) The governing body of a taxing unit may contract with a bank or other financial institution for receipt of payment of taxes payable at ~~par.~~ par and of delinquent taxes and interest for the current tax year. A financial institution may not issue a receipt for any tax payments received by it, however. Discount for early payment of taxes shall be allowed by a financial institution that contracts with a taxing unit pursuant to this subsection to the same extent as allowed by the tax collector. A financial institution that contracts with a taxing unit for receipt of payment of taxes shall furnish a bond to the taxing unit conditioned upon faithful performance of the contract in a form and

amount satisfactory to the governing body of the taxing unit. A governing body of a taxing unit that contracts with a financial institution pursuant to this subsection shall publish a timely notice of the institution at which taxpayers may pay their taxes in a newspaper having circulation within the taxing unit. No notice is required, however, if the financial institution receives payments only through the mail."

Sec. 2. G.S. 105-357(b) reads as rewritten:

"(b) Acceptance of ~~Checks.~~ Checks and Credit Cards. -- ~~In the tax collector's discretion and at his own risk, he may accept checks in payment of taxes.~~ The tax collector may accept checks, credit cards, or both in payment of taxes. Acceptance of a check or credit card is at the tax collector's own risk. A tax collector who accepts credit cards in payment of taxes may add a fee to each credit card transaction to offset the service charge the taxing unit pays for credit card service. A tax collector who accepts a credit card or check in payment of taxes may ~~Should he do so, the tax collector shall have the option to~~ issue the tax receipt immediately or ~~to~~ withhold the receipt until the check has been ~~collected.~~ collected or the credit card invoice has been honored by the issuer.

If a tax collector accepts a check or a credit card and issues a tax receipt and the check is ~~thereafter~~ returned unpaid (without negligence on the part of the tax collector in presenting the check for ~~payment),~~ payment) or the credit card invoice is not honored by the issuer, the taxes for which the check or credit card was given shall be deemed unpaid; ~~and~~ the tax collector shall immediately correct the copy of the tax receipt and other appropriate records ~~in his office~~ to show the fact of nonpayment, and ~~he~~ shall give written notice by certified or registered mail to the person to whom the tax receipt was issued to return it to the tax collector. After correcting the records ~~in his office~~ to show the fact of nonpayment, the tax collector shall proceed to collect the taxes by the use of any remedies allowed for the collection of taxes or by bringing a civil action on the ~~check.~~ check or credit card.

A financial institution with which a taxing unit has contracted for receipt of payment of taxes may accept a check in payment of taxes. If the check is honored, the financial institution shall so notify the tax collector, who shall, upon request of the taxpayer, issue a receipt for payment of the taxes. If the check is returned unpaid, the financial institution shall so notify the tax collector, who shall proceed to collect the taxes by use of any remedy allowed for collection of taxes or by bringing a civil action on the check.

(1) Effect on Tax Lien. -- If the tax collector accepts a ~~check~~ check or credit card in payment of taxes on real ~~property,~~

~~issues the receipt therefor,~~ property and issues the receipt, and the check is later returned ~~unpaid,~~ unpaid or the credit card invoice is not honored by the issuer, the taxing unit's lien for taxes on the real property shall be inferior to the rights of purchasers for value and of persons acquiring liens of record for value if ~~such~~ the purchasers or lienholders acquire their rights in good faith and without actual knowledge that the check has not been ~~collected,~~ collected or the credit card invoice has not been honored, after examination of the copy of the tax receipt in the tax collector's office during the time that record showed the taxes as paid or after examination of the official receipt issued to the taxpayer prior to the date on which the tax collector notified ~~him~~ the taxpayer to return the receipt.

(2) Penalty. -- In addition to interest for nonpayment of taxes provided by G.S. 105-360 and in addition to any criminal penalties provided by law for the giving of worthless checks, the penalty for giving in payment of taxes a check that is returned because of insufficient funds or nonexistence of an account of the drawer is ten percent (10%) of the amount of the check, subject to a minimum of one dollar ($1.00) and a maximum of one thousand dollars ($1,000). This penalty does not apply if the tax collector finds that, when the check was presented for payment, the drawer of the check had sufficient funds in an account at a financial institution in this State to pay the check and, by inadvertance, the drawer of the check failed to draw the check on the account that had sufficient funds. This penalty shall be added to and collected in the same manner as the taxes for which the check was given."

Sec. 3. Section 2 of this act is effective for taxes imposed for taxable years beginning on or after July 1, 1991; the remainder of this act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 367 **CHAPTER 585**

AN ACT TO PROVIDE FOR PAYMENT OF PENALTIES FOR LATE PAYMENT OF CONTRIBUTIONS BY EMPLOYERS PARTICIPATING IN THE LOCAL GOVERNMENTAL EMPLOYEES' RETIREMENT SYSTEM AND TEACHERS' AND STATE EMPLOYEES' RETIREMENT SYSTEM.

The General Assembly of North Carolina enacts:

Section 1. G.S. 128-23(e) reads as rewritten:

"(e) The agreement of such employer to contribute on account of its employees shall be irrevocable, but should an employer for any reason become financially unable to make the normal and accrued liability contributions payable on account of its employees, then such employer shall be deemed to be in temporary default. Such temporary default shall not relieve such employer from any liability for its contributions payable on account of its ~~employees,~~ employees. ~~but such contributions payable during the period of temporary default shall be paid at such later time as may be mutually agreed upon by the employer and the Board of Trustees together with interest thereon at the rate of six per centum (6%) per annum. At such time as such defaulted contributions together with interest thereon shall be fully paid, such employer shall no longer be deemed in temporary default and shall be restored to good standing in the Retirement System.~~

Notwithstanding anything to the contrary, the Retirement System shall not be liable for the payment of any pensions or other benefits on account of the employees or pensioners of any employer under this Article, for which reserves have not been previously created from funds contributed by such employer or its employees for such benefits."

Sec. 2. G.S. 128-30(g) reads as rewritten:

"(g) Collection of Contributions. --

(1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of participation in the Retirement System the contributions payable by such member as provided in this Article. Each employer shall certify to the treasurer of said employer on each and every payroll a statement as vouchers for the amount so deducted.

b. The treasurer of each employer on the authority from the employer shall make deductions from salaries of members as provided in this Article and shall transmit monthly, or at such time as the Board of Trustees shall designate, the amount specified to be deducted, to the secretary-treasurer of the Board of Trustees. The secretary-treasurer of the Board of Trustees after making a record of all such receipts shall deposit them in a bank or banks selected by said Board of Trustees for use according to the provisions of this Article.

(2) The collections of employers' contributions shall be made as follows: Upon the basis of each actuarial valuation provided herein the Board of Trustees shall annually prepare and certify to each employer a statement of the total amount necessary for the ensuing fiscal year to the pension accumulation fund as provided under subsection (d) of this section. Such employer contributions shall be transmitted to the secretary-treasurer of the Board of Trustees together with the employee deductions as provided under sub-subdivision b. of subdivision (1) of this subsection.

(3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees, the Board shall assess the employer with a penalty of 1% per month with a minimum penalty of twenty-five dollars ($25.00). If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such ~~employer~~ employer, or the municipality or county of which such employer is an integral part, from any funds of the State or any funds collected by the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default."

Sec. 3. G.S. 135-8(f) reads as rewritten:

"(f) Collection of Contributions.

(1) The collection of members' contributions shall be as follows:

a. Each employer shall cause to be deducted on each and every payroll of a member for each and every payroll subsequent to the date of establishment of the Retirement System the contributions payable by such member as provided in this Chapter, and the employer shall draw his warrant for the amount so deducted, payable to the Teachers' and State Employees' Retirement System of North Carolina, and shall transmit the same, together

with schedule of the contributions, on such forms as prescribed.

(2) The collection of employers' contributions shall be made as follows:

a. Upon the basis of each actuarial valuation provided herein there shall be prepared biennially and certified to the Department of Administration a statement of the total amount necessary for the ensuing biennium to the pension accumulation and expense funds, as provided under subsections (d) and (f) of this section, and these funds shall be handled and disbursed in accordance with Chapter 100, Public Laws of 1929, and amendments thereto (G.S. 143-1 **et seq.**), known as the Executive Budget Act.

b. Until the first valuation has been made and the rates computed as provided in subsection (d) of this section, the amount payable by employers on account of the normal and accrued liability contributions shall be five and fifty-one one-hundredths percent (5.51%) of the payroll of all teachers and three and sixteen one-hundredths percent (3.16%) for other State employees.

c. The auditor shall issue his warrant to the State Treasurer directing the State Treasurer to pay this sum to the Board of Trustees, from the appropriations for the Teachers' and State Employees' Retirement System.

d. Each board of education in each county and each board of education in each city in which teachers or other employees of the schools receive compensation for services in the public schools from sources other than the appropriation of the State of North Carolina shall pay the Board of Trustees of the State Retirement System such rate of their respective salaries as are paid those of other employees.

e. Each employer shall transmit monthly to the State Retirement System on account of each employee, who is a member of this System, an amount sufficient to cover the normal contribution and the accrued liability contribution of each member employed by such employer for the preceding month.

(3) In the event the employee or employer contributions required under this section are not received by the date set by the Board of Trustees, the Board shall assess the employer with a penalty of 1% per month with a minimum

penalty of twenty-five dollars ($25.00). If within 90 days after request therefor by the Board any employer shall not have provided the System with the records and other information required hereunder or if the full accrued amount of the contributions provided for under this section due from members employed by an employer or from an employer other than the State shall not have been received by the System from the chief fiscal officer of such employer within 30 days after the last due date as herein provided, then, notwithstanding anything herein or in the provisions of any other law to the contrary, upon notification by the Board to the State Treasurer as to the default of such employer as herein provided, any distributions which might otherwise be made to such employer from any funds of the State shall be withheld from such employer until notice from the Board to the State Treasurer that such employer is no longer in default."

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 370 **CHAPTER 586**

AN ACT SPECIFYING PROCEDURES FOR FILING OF ANNEXATION DOCUMENTS WITH THE SECRETARY OF STATE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-29 reads as rewritten:

"*§ 160A-29. Map of annexed area, copy of ordinance and election results recorded in the office of register of deeds.*

Whenever the limits of any municipal corporation are enlarged, in accordance with the provisions of this Article, it shall be the duty of the mayor of the city or town to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, and the official results of the election, if conducted, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of ~~State.~~ State. ~~and in the case of annexed territory located in a county with a population of 55,000 or over according to the 1980 decennial federal census or in any other county subject to Article 12A of Chapter 163 of the General Statutes, pursuant to G.S. 163-132.6, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of~~

~~such map and ordinance to be filed with the county board of elections of the county where the territory is located.~~ The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census."

Sec. 2. G.S. 160A-39 reads as rewritten:

"§ *160A-39. Annexation recorded.*

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of ~~State,~~ State. ~~and in the case of annexed territory located in a county with a population of 55,000 or over according to the 1980 decennial federal census or in any other county subject to Article 12A of Chapter 163 of the General Statutes, pursuant to G.S. 163-132.6, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of such map and ordinance to be filed with the county board of elections of the county where the territory is located.~~ The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census."

Sec. 3. G.S. 160A-51 reads as rewritten:

"§ *160A-51. Annexation recorded.*

Whenever the limits of a municipality are enlarged in accordance with the provisions of this Part, it shall be the duty of the mayor of the municipality to cause an accurate map of such annexed territory, together with a copy of the ordinance duly certified, to be recorded in the office of the register of deeds of the county or counties in which such territory is situated and in the office of the Secretary of ~~State,~~ State. ~~and in the case of annexed territory located in a county with a population of 55,000 or over according to the 1980 decennial federal~~

~~census or in any other county subject to Article 12A of Chapter 163 of the General Statutes, pursuant to G.S. 163-132.6, where the annexation ordinance becomes effective during the period beginning January 1, 1988, and ending January 2, 1990, to cause a copy of such map and ordinance to be filed with the county board of elections of the county where the territory is located.~~ The documents required to be filed with the Secretary of State under this section shall be filed not later than 30 days following the effective date of the annexation ordinance. All documents shall have an identifying number affixed thereto and shall conform in size in accordance with rules prescribed by the Secretary. Failure to file within 30 days shall not affect the validity of the annexation. Any annexation shall be reported as part of the Boundary and Annexation Survey of the United States Bureau of the Census."

Sec. 4. This act becomes effective October 1, 1991, and applies to annexation documents required to be filed with the Secretary of State after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 419 **CHAPTER 587**

AN ACT RELATING TO REVIVAL OF WILL PROVISIONS REVOKED BY DIVORCE OR ANNULMENT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 31-5.4 reads as rewritten:

"*§ 31-5.4. Revocation by divorce or annulment; revival.*

Dissolution of marriage by absolute divorce or annulment after making a will does not revoke the will of any testator but, unless otherwise specifically provided in the will, it revokes all provisions in the will in favor of the testator's former spouse or purported former spouse ~~so divorced~~, including, but not by way of limitation, ~~the appointment of such spouse as executor or executrix~~ any provision conferring a general or special power of appointment on the former spouse or purported former spouse and any appointment of the former spouse or purported former spouse as executor, trustee, conservator, or guardian. If provisions are revoked solely by this section, they are revived by the testator's remarriage to the former spouse or purported former spouse."

Sec. 2. G.S. 31-5.8 reads as rewritten:

"*§ 31-5.8. Revival of revoked will.*

No will or any part thereof~~, which~~ that ~~shall be~~ has been in any manner revoked can, except as provided in G.S. 31-5.4, ~~can~~ be revived otherwise than by a reexecution thereof, or by the execution of another will in which the revoked will or part thereof is incorporated by reference."

Sec. 3. This act is effective October 1, 1991 and applies to the will of any person dying on or after that date.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 464 **CHAPTER 588**

AN ACT TO MODIFY THE FEES PAYABLE BY SEED GROWERS AND DEALERS, TO AUTHORIZE THE BOARD OF AGRICULTURE TO ISSUE A STOP-SALE ORDER WHEN A DEALER OR GROWER FAILS TO PAY THE SEED FEE, AND TO ELIMINATE THE REQUIREMENT THAT A SEED DEALER OR GROWER FURNISH A BOND.

The General Assembly of North Carolina enacts:

Section 1. G.S. 106-277.28, as amended by Chapter 98 of the 1991 Session Laws, reads as rewritten:

"§ *106-277.28. ~~Fees for tags, stamps and licenses.~~ License and inspection fees.*

For the purpose of providing a fund to defray the expense of inspection, examination, ~~analyses~~ and analysis of seeds and the enforcement of ~~the provisions of the~~ this Article:

~~(1) Each seed dealer or grower selling, offering or exposing for sale in this State any agricultural or vegetable seeds for seeding purposes shall purchase from the Commissioner for two cents (2¢) each, official North Carolina seed analysis tags or stamps and shall attach a tag (or stamp on the seedman's label) to each container holding 10 pounds or more of seed; provided, however, that a seed dealer or grower who sells only seed lots originated by his company may request to pay these applicable fees through the reporting system prescribed in subdivision (3) hereof; provided, further, that this subdivision shall not apply to the sale of seed by a farmer who sells only seed grown on his farm and when such sales are confined to his farm.~~

(2) Each seed dealer ~~selling, distributing, offering, or exposing for sale in, or exporting from, this State~~ who offers for sale any agricultural, vegetable, or lawn or turf seeds for seeding purposes shall register with the Commissioner and shall

obtain an annual license, for each location where activities are conducted, by January 1 of each year and shall pay ~~for such license as follows:~~ the following license fee:

a. Wholesale or combined wholesale and retail seed dealer $100.00
b. Retail seed dealer with sales of no more than $500.00 ..... 5.00
c. Retail seed dealer with sales of more than $500.00 but no more than $1,000 ..... 15.00
d. Retail seed dealer with sales of more than $1,000 ..... 25.00.

(3) ~~A seed~~ Each seed dealer or grower ~~who sells only seed lots originated by his company may request of the Commissioner of Agriculture authority to~~ who has seed, whether originated or labeled by the dealer or grower, that is offered for sale in this State shall report the quantity of seed sold and ~~to pay the fees~~ pay an inspection fee of two cents (2¢) for each ~~applicable under G.S. 106-277.28(1) in lieu of attaching an official North Carolina tag or stamp to each~~ container of seeds weighing 10 pounds or more. This fee does not apply to seed grown by a farmer and offered for sale by the farmer at the farm where the seed was grown.

~~Upon granting authority, the Commissioner of Agriculture shall require each~~ Each seed dealer or grower ~~to~~ shall keep ~~such~~ accurate records ~~as may be necessary to indicate accurately~~ of the quantity of seeds and container weights sold from each distribution point in the State. ~~Such~~ These records shall be available to the Commissioner or ~~his duly~~ an authorized representative of the Commissioner at any and all reasonable hours for the purpose of ~~making such examination as is necessary to verify~~ verifying the quantity of seed sold and the fees paid. Each seed dealer or grower shall report quarterly on forms furnished by the Commissioner the quantity and container weight of seeds sold. The reports shall be made on the first day of January, April, July, and October, or within 10 days thereafter, and the inspection fee shall be due and payable with the report. If the report is not filed and the inspection fee paid to the Department of Agriculture by the tenth day following the date due, or if the report of the quantity or container weights ~~be~~ is false, the Commissioner may ~~revoke the authority to use the reporting system.~~ issue a stop-sale order for all seed offered for sale by the dealer or grower. If the inspection fee is unpaid more than 15 days after the due date, the amount due shall bear a

penalty of ten percent (10%) which shall be added to the inspection fee due."

Sec. 2. This act becomes effective July 1, 1992.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 488 **CHAPTER 589**

AN ACT TO AUTHORIZE THE CONSTRUCTION AND THE FINANCING, WITHOUT APPROPRIATIONS FROM THE GENERAL FUND, OF A CAPITAL IMPROVEMENTS PROJECT AT WINSTON-SALEM STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

Section 1. The purpose of this act is to authorize construction, by Winston-Salem State University, of a 400 Student Men's Dormitory, in the amount of nine million one hundred twenty-four thousand two hundred dollars ($9,124,200), and to authorize the financing of this capital improvements project from funds available to the institution from gifts, grants, receipts, self-liquidating indebtedness, or other funds, or any combination of such funds, but not including funds appropriated from the General Fund of the State.

Sec. 2. The project hereby authorized to be constructed and financed as provided in Section 1 of this act is as follows:

1. Winston-Salem State University
   a. 400 Student Men's Dormitory $9,124,200.

Sec. 3. At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of or a change in the method of funding for the project authorized by this act. In making a determination of whether to authorize a change in scope or funding, the Director of the Budget may consult with the Advisory Budget Commission. In no event may appropriations from the General Fund be used for the project authorized by this act.

Sec. 4. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 490 **CHAPTER 590**

AN ACT TO AMEND CHAPTER 965 OF THE 1989 SESSION LAWS TO PROVIDE CHANGES ONLY WITH RESPECT TO A PROJECT WHOLLY SELF-LIQUIDATING.

The General Assembly of North Carolina enacts:

Section 1. Section 2 of Chapter 965 of the 1989 Session Laws reads as rewritten:

"Sec. 2. The projects hereby authorized to be constructed and financed as provided in Section 1 of this act are as follows:

1. Appalachian State University		
Addition to Plemmons Student Union Building		$ 9,085,700
2. East Carolina University		
College Hill Dining Facility	~~4,081,800~~	5,391,100
Student Recreation Center		17,976,200
Renovate Slay and Umstead Dormitories		6,092,900
3. The University of North Carolina at Chapel Hill		
Renovation of Old East and Old West Residence Halls		4,098,100
Student Recreation Center		4,945,700
Office Building		4,864,100
Storage Facility		2,323,500
4. Western Carolina University		
Renovate Reynolds Residence Hall		2,158,700
5. The University of North Carolina Hospitals at Chapel Hill Neuropsychiatric Hospital		43,215,000."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 501 **CHAPTER 591**

AN ACT TO CLARIFY THE PUBLIC ENTERPRISE LAW WITH RESPECT TO STORMWATER UTILITIES ESTABLISHED BY CITIES AND COUNTIES AND TO GIVE WATER AND SEWER AUTHORITIES THE ABILITY TO OPERATE AND FINANCE STORMWATER UTILITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 160A-314 reads as rewritten:

"*§ 160A-314. Authority to fix and enforce rates.*

(a) A city may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by any public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary according to classes of service, and different schedules may be adopted for services provided outside the corporate limits of the city.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and

drainage systems under this section, the city council shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

Fees established as provided in this subsection shall be made applicable throughout the area of the city. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this section may not exceed the city's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee pursuant to this act within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) A city shall have power to collect delinquent accounts by any remedy provided by law for collecting and enforcing private ~~debts.~~ debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A city may also discontinue service to any customer whose account remains delinquent for more than 10 days. When service is discontinued for delinquency, it shall be unlawful for any person other than a duly authorized agent or employee of the city to do any act that results in a resumption of services. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises, but this

restriction shall not apply when the premises are occupied by two or more tenants whose services are measured by the same meter.

(c) Except as provided in subsection (d), rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the person contracting for them, and shall in no case be a lien upon the property or premises ~~served.~~ served, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services shall be legal obligations of the owner of the premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter.

(2) Charges made for use of a sewage system are billed separately from charges made for the use of a water distribution system.

(e) Nothing in this section shall repeal any portion of any city charter inconsistent herewith."

Sec. 2. G.S. 153A-277 reads as rewritten:

"§ *153A-277. Authority to fix and enforce rates.*

(a) A county may establish and revise from time to time schedules of rents, rates, fees, charges, and penalties for the use of or the services furnished by a public enterprise. Schedules of rents, rates, fees, charges, and penalties may vary for the same class of service in different areas of the county and may vary according to classes of service, and different schedules may be adopted for services provided outside of the county.

(a1) Before it establishes or revises a schedule of rates, fees, charges, or penalties for structural and natural stormwater and drainage systems under this section, the board of commissioners shall hold a public hearing on the matter. A notice of the hearing shall be given at least once in a newspaper having general circulation in the area, not less than seven days before the public hearing. The hearing may be held concurrently with the public hearing on the proposed budget ordinance.

Fees established as provided in this subsection shall be made applicable throughout the area of the county outside municipalities. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the

watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this section may not exceed the county's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee pursuant to this act within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) A county may collect delinquent accounts by any remedy provided by law for collecting and enforcing private ~~debts.~~ debts, and may specify by ordinance the order in which partial payments are to be applied among the various enterprise services covered by a bill for the services. A county may also discontinue service to a customer whose account remains delinquent for more than 10 days. If a delinquent customer is not the owner of the premises to which the services are delivered, the payment of the delinquent account may not be required before providing services at the request of a new and different tenant or occupant of the premises. If water or sewer services are discontinued for delinquency, it is unlawful for a person other than a duly authorized agent or employee of the county to reconnect the premises to the water or sewer system.

(c) Rents, rates, fees, charges, and penalties for enterprisory services are in no case a lien upon the property or premises served and, except as provided in subsection (d) of this section, are legal obligations of the person contracting for ~~them.~~ them, provided that no contract shall be necessary in the case of structural and natural stormwater and drainage systems.

(d) Rents, rates, fees, charges, and penalties for enterprisory services are legal obligations of the owner of the property or premises served when:

(1) The property or premises is leased or rented to more than one tenant and services rendered to more than one tenant are measured by the same meter; or

(2) Charges made for use of a sewerage system are billed separately from charges made for the use of a water distribution system."

Sec. 3. G.S. 162A-2(12) reads as rewritten:

"(12) The term 'water system' shall mean and include all plants, systems, facilities or properties used or useful or having the present capacity for future use in connection with the supply or distribution of ~~water,~~ water or the control and drainage of stormwater runoff and any integral part thereof, including but not limited to water supply systems, water distribution systems, structural and natural stormwater and drainage systems of all types, sources of water supply including lakes, reservoirs and wells, intakes, mains, laterals, aqueducts, pumping stations, standpipes, filtration plants, purification plants, hydrants, meters, valves, and all necessary appurtenances and equipment and all properties, rights, easements and franchises relating thereto and deemed necessary or convenient by the authority for the operation thereof."

Sec. 4. G.S. 162A-9 reads as rewritten:

"*§ 162A-9. Rates and charges; contracts for water or services; deposits; delinquent charges.*

(a) Each authority shall fix, and may revise from time to time, reasonable rates, fees and other charges for the use of and for the services furnished or to be furnished by any water system or sewer system or parts thereof owned or operated by such authority. Such rates, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the State or of any political subdivision.

Before an authority sets or revises rates, fees, or other charges for structural or natural stormwater and drainage system service, the authority shall hold a public hearing on the matter. At least seven days before the hearing, the authority shall publish notice of the public hearing in a newspaper having general circulation in the area. An authority may impose rates, fees, or other charges for stormwater and drainage system service on a person even though the person has not entered into a contract to receive the service.

~~Such rates, fees~~ Rates, fees, and charges shall be fixed and revised so that the revenues of the authority, together with any other available funds, will be sufficient at all times:

(1) To pay the cost of maintaining, repairing and operating the systems or parts thereof owned or operated by the authority, including reserves for such purposes, and including provision for the payment of principal of and interest on indebtedness of a political subdivision or of political subdivisions which payment shall have been assumed by the authority, and

(2) To pay the principal of and the interest on all bonds issued by the authority under the provisions of this Article as the same shall become due and payable and to provide reserves therefor.

Fees established as provided in this subsection shall be made applicable throughout the service area. Schedules of rates, fees, charges, and penalties for providing structural and natural stormwater and drainage system service may vary according to whether the property served is residential, commercial, or industrial property, the property's use, the size of the property, the area of impervious surfaces on the property, the quantity and quality of the runoff from the property, the characteristics of the watershed into which stormwater from the property drains, and other factors that affect the stormwater drainage system. Rates, fees, and charges imposed under this section may not exceed the authority's cost of providing a stormwater and drainage system.

No stormwater utility fee may be levied under this subsection whenever two or more units of local government operate separate structural and natural stormwater and drainage system services in the same area within a county. However, two or more units of local government may allocate among themselves the functions, duties, powers, and responsibilities for jointly operating a single structural and natural stormwater and drainage system service in the same area within a county, provided that only one unit may levy a fee pursuant to this act within the joint service area. For purposes of this subsection, a unit of local government shall include a regional authority providing structural and natural stormwater and drainage system services.

(b) Notwithstanding any of the foregoing provisions of this section, the authority may enter into contracts relating to the collection, treatment or disposal of sewage or the purchase or sale of water which shall not be subject to revision except in accordance with their terms.

(c) In order to insure the payment of such rates, fees and charges as the same shall become due and payable, the authority ~~may,~~ may do the following in addition to exercising any other remedies which it may have:

(1) Require reasonable advance deposits to be made with it to be subject to application to the payment of delinquent rates, fees and ~~charges, and~~ charges.

(2) At the expiration of 30 days after any ~~such~~ rates, fees and charges become delinquent, discontinue supplying water or the services and facilities of any water system or sewer system of the authority.

(3) Specify the order in which partial payments are to be applied when a bill covers more than one service."

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 556 **CHAPTER 592**

AN ACT TO INCREASE VARIOUS FEES IMPOSED BY THE HEARING AID DEALERS AND FITTERS BOARD AND TO AUTHORIZE THE BOARD TO IMPOSE ADDITIONAL FEES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 93D-3(c) reads as rewritten:

"(c) The Board shall:

(1) Authorize all disbursements necessary to carry out the provisions of this Chapter;

(2) Supervise and administer qualifying examinations to test and determine the knowledge and proficiency of applicants for licenses;

(3) Issue licenses to qualified persons who apply to the Board;

(4) Obtain audiometric equipment and facilities necessary to carry out the examination of applicants for licenses;

(5) Suspend or revoke licenses pursuant to this Chapter;

(6) Make and publish ~~rules and regulations (including~~ rules, including a code of ~~ethics) which~~ ethics, that are necessary and proper to regulate the fitting and selling of hearing aids and to carry out the provisions of this Chapter;

(7) Exercise jurisdiction over the hearing of complaints, charges of malpractice including corrupt or unprofessional conduct, and allegations of violations of the Board's ~~rules or regulations, which~~ rules that are made against any fitter and seller of hearing aids in North Carolina;

(8) Require the periodic inspection and calibration of audiometric testing equipment of persons who are fitting and selling hearing aids;

(9) In connection with any matter within the jurisdiction of the Board, summon and subpoena and examine witnesses under oath and to compel their attendance and the production of books, papers, or other documents or writings deemed by the Board to be necessary or material to the inquiry. Each summons or subpoena shall be issued under the hand of the secretary and treasurer or the president of the Board and shall have the force and effect of

a summons or subpoena issued by a court of record. Any witness who shall refuse or neglect to appear in obedience thereto or to testify or produce books, papers, or other documents or writings required shall be liable to contempt charges. The Board shall pay to any witness subpoenaed before it the fees and per diem as paid witnesses in civil actions in the superior court of the county where such hearing is held;

(10) Inform the Attorney General of any information or knowledge it acquires regarding any 'price-fixing' activity whatsoever in connection with the sales and service of hearing aids;

(11) Establish and enforce ~~regulations which will~~ rules to guarantee that a full refund will be made by the seller of a hearing aid to the purchaser when presented with a written medical opinion of an otolaryngologist that the purchaser's hearing cannot be improved by the use of a hearing aid;

(12) Fund, establish, conduct, approve and sponsor instructional programs for registered apprentices and for persons who hold a license as well as for persons interested in obtaining adequate instruction or programs of study to qualify them for registration to the extent that the Board deems such instructional programs to be beneficial or necessary;

(13) Register persons serving as apprentices as set forth in ~~G.S. 93D-9.~~ G.S. 93D-9;

(14) Have the power to set and collect fees in accordance with Chapter 150B of the General Statutes for the items listed in this subdivision and for other items for which this Chapter gives the Board the authority to set a fee:

a. For a continuing education make-up class provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer a make-up class that is longer than two days;

b. For a license examination preparation course provided by the Board, a fee not to exceed fifty dollars ($50.00) per person for each day of instruction. The Board may not offer an examination preparation course that is longer than three days;

c. For approval of a continuing education program provider, a fee not to exceed forty dollars ($40.00);

d. For verifying and recording attendance at a continuing education program not provided by the Board, a fee not to exceed fifteen dollars ($15.00) per licensee per program;

e. For providing a voluntary two-day apprentice training workshop, a fee not to exceed one hundred dollars ($100.00) per person, and for providing a three-day voluntary apprentice training workshop, a fee not to exceed one hundred fifty dollars ($150.00) per person;

f. For administering an examination, a fee not to exceed seventy-five dollars ($75.00); and

(15) Adopt annually a balanced budget prior to the beginning of its fiscal year, against which expenditures shall be reviewed throughout the fiscal year to ensure that expenditures during the year do not exceed receipts for that year plus amounts held by the Board in reserve. Except for monies from charges for photocopying and similar charges, the Board's receipts shall consist of and be limited to funds derived from fees expressly authorized by law."

Sec. 2. G.S. 93D-5(a) reads as rewritten:

"(a) No person shall begin the fitting and selling of hearing aids in this State ~~after the effective date of this Chapter until he is~~ unless the person has been issued a license by the Board or is an apprentice working under the supervision of a licensee. Except as hereinafter provided, each applicant for a license shall pay a fee ~~of one hundred dollars ($100.00)~~ set by the Board, not to exceed one hundred fifty dollars ($150.00), and shall show to the satisfaction of the Board that ~~he:~~ the applicant:

(1) Is a person of good moral character,

(2) Is 18 years of age or older,

(3) Has an education equivalent to a four-year course in an accredited high school,

(4) Is free of contagious or infectious disease."

Sec. 3. G.S. 93D-6 reads as rewritten:

"*§ 93D-6. Persons selling in other jurisdictions.*

Whenever the Board determines that another state or jurisdiction has requirements at least equivalent to those in effect pursuant to this Chapter for the fitting and selling of hearing aids, and that such state or jurisdiction has a program at least equivalent to the program for determining whether applicants pursuant to this ~~Article [Chapter]~~ Chapter are qualified to sell and fit hearing aids, the Board may issue, but is not compelled to issue, licenses to applicants therefor who hold current, unsuspended and unrevoked certificates or licenses to fit and sell hearing aids in such other state or jurisdiction. No such applicant shall be required to submit to any examination or other procedure required by G.S. 93D-5, ~~except that he~~ but shall be required to pay an application fee ~~of one hundred dollars ($100.00) to the Board upon application.~~ to the Board in an amount set by the Board, not to exceed

one hundred fifty dollars ($150.00). Such applicant must have one full year of experience satisfactory to the Board before issuance of the license."

Sec. 4. G.S. 93D-8(b) reads as rewritten:

"(b) Upon payment of ~~five dollars ($5.00)~~ a fee set by the Board, not to exceed twenty-five dollars ($25.00), the Board shall issue a license certificate to each applicant who successfully passes the examination."

Sec. 5. G.S. 93D-9 reads as rewritten:

"§ *93D-9. Registration of apprentices.*

(a) Any person age 17 or older may apply to the Board for registration as an apprentice. Each ~~such~~ applicant must be sponsored by a hearing aid dealer and fitter licensed by the Board.

(b) Upon receiving an application accompanied by a fee ~~of fifty-five dollars ($55.00),~~ in an amount set by the Board, not to exceed one hundred dollars ($100.00), the Board may register the applicant as an apprentice, which shall entitle the applicant to fit and sell hearing aids under the supervision of a holder of a regular license.

(c) No ~~apprentice~~ applicant shall be registered as an apprentice by the Board under this section unless the applicant shows to the satisfaction of the Board that ~~he~~ the applicant is or will be supervised and trained by a hearing aid fitter and seller who holds a license.

(d) If a person 18 years of age or older who is registered as an apprentice under this section does not take the next succeeding examination given after a minimum of one full year of apprenticeship, ~~his~~ the person's apprentice registration shall not be renewed, except for good cause shown to the satisfaction of the Board.

(e) If a person who is registered as an apprentice takes and fails to pass the next succeeding examination given after one full year of apprenticeship, the Board may renew the apprenticeship license for a period of time to end 30 days after the results of the examination given next after the date of renewal of said registration. The fee for renewal of apprenticeship registration shall be ~~one hundred dollars ($100.00),~~ set by the Board at an amount not to exceed one hundred fifty dollars ($150.00).

(f) The Board shall adopt rules ~~and regulations~~ implementing initial and renewal registration of apprentices."

Sec. 6. G.S. 93D-11 reads as rewritten:

"§ *93D-11. Annual fees; failure to pay; expiration of license; occupational instruction courses.*

Every licensed person who engages in the fitting and selling of hearing aids shall pay to the Board an annual license renewal fee ~~of one hundred dollars ($100.00),~~ in an amount set by the Board, not to exceed one hundred fifty dollars ($150.00). Such payment shall be

made prior to the first day of April in each year. In case of default in payment the license shall expire 30 days after notice by the secretary-treasurer to the last known address of the licensee by registered mail. The Board may reinstate an expired license upon the showing of good cause for late payment of fees, upon payment of said fees within 60 days after expiration of the license, and upon the further payment of a late penalty ~~of ten dollars ($10.00).~~ of twenty-five dollars ($25.00). After 60 days after the expiration date, the Board may reinstate the license for good cause shown upon application for reinstatement and payment of ~~the~~ a late penalty of ~~ten dollars ($10.00)~~ fifty dollars ($50.00) and the renewal fee.

The Board may require all licensees to successfully attend and complete a course or courses of occupational instruction funded, conducted or approved or sponsored by the Board on an annual basis as a condition to any license renewal and evidence of satisfactory attendance and completion of any such course or courses shall be provided the Board by the licensee."

Sec. 7. G.S. 93D-13(b) reads as rewritten:

"(b) Board action in revoking or suspending a license shall be in accordance with ~~the provisions of~~ Chapter ~~150A~~ 150B of the General Statutes. Any person whose license has been suspended for any of the grounds or reasons herein set forth, may, after the expiration of 90 days but within two years, apply to the Board to have the same reissued; upon a showing satisfactory to the Board that such reissuance will not endanger the public health and welfare, the Board may reissue a license to such person for a fee ~~of one hundred dollars ($100.00) plus five dollars ($5.00) for a certificate of license.~~ set by the Board, not to exceed two hundred dollars ($200.00). If application is made subsequent to two years from date of suspension, reissuance shall be in accordance with the provisions of G.S. 93D-8."

Sec. 8. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 597 **CHAPTER 593**

AN ACT TO ENCOURAGE THE STATE BUREAU OF INVESTIGATION TO FORM A TASK FORCE TO INVESTIGATE ALL CASES OF SUBSTANTIATED CHILD SEXUAL ABUSE IN DAY CARE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 7A-544 reads as rewritten:

"§ 7A-544. Investigation by Director; notification of State Bureau of Investigation if sexual abuse in day care; notification of person making the report.

When a report of abuse or neglect is received, the Director of the Department of Social Services shall make a prompt and thorough investigation in order to ascertain the facts of the case, the extent of the abuse or neglect, and the risk of harm to the juvenile, in order to determine whether protective services should be provided or the complaint filed as a petition. When the report alleges abuse, the Director shall immediately, but no later than 24 hours after receipt of the report, initiate the investigation. When the report alleges neglect, the Director shall initiate the investigation within 72 hours following receipt of the report. The investigation and evaluation shall include a visit to the place where the juvenile resides. All information received by the Department of Social Services shall be held in strictest confidence by the Department.

If the investigation reveals abuse or neglect, the Director shall decide whether immediate removal of the juvenile or any other juveniles in the home is necessary for their protection. If immediate removal does not seem necessary, the Director shall immediately provide or arrange for protective services. If the parent or other caretaker refuses to accept the protective services provided or arranged by the Director, the Director shall sign a complaint seeking to invoke the jurisdiction of the court for the protection of the juvenile or juveniles.

If immediate removal seems necessary for the protection of the juvenile or other juveniles in the home, the Director shall sign a complaint which alleges the applicable facts to invoke the jurisdiction of the court. Where the investigation shows that it is warranted, a protective services worker may assume temporary custody of the juvenile for the juvenile's protection pursuant to Article 46 of this Chapter.

In performing any of these duties, the Director may utilize the staff of the county Department of Social Services or any other public or private community agencies that may be available. The Director may also consult with the available State or local law-enforcement officers who shall assist in the investigation and evaluation of the seriousness of any report of abuse or neglect when requested by the Director. If the Director's initial investigation of a report of abuse in a day care facility reveals sexual abuse may have occurred, the Director shall notify the State Bureau of Investigation of the results of the initial investigation within 24 hours or on the next working day. The State Bureau of Investigation may send a task force to investigate the alleged

sexual abuse and gather evidence that may be presented at a criminal trial.

Unless a petition is filed within five working days after receipt of the report of abuse or neglect, the Director shall give written notice to the person making the report that:

(1) There is no finding of abuse or neglect; or

(2) The county Department of Social Services is taking action to protect the welfare of the juvenile and what specific action it is taking.

The notification shall include notice that, if the person making the report is not satisfied with the Director's decision, he may request review of the decision by the prosecutor within five working days of receipt. The person making the report may waive his right to this notification and no notification is required if the person making the report does not identify himself to the Director."

Sec. 2. G.S. 7A-548 reads as rewritten:

"*§ 7A-548. Duty of Director to report evidence of abuse, neglect; notification of ~~Child Day Care Commission.~~ Department of Human Resources and State Bureau of Investigation.*

(a) If the Director finds evidence that a juvenile has been abused as defined by G.S. 7A-517(1), he shall immediately make a written report of the findings of his investigation to the district attorney, who shall determine if criminal prosecution is appropriate, and who may request the Director or his designee to appear before a magistrate.

If the Director receives information that a juvenile has been physically harmed in violation of any criminal statute by any person other than the juvenile's parent or other person responsible for his care, he shall make an oral or written report of that information to the district attorney or the district attorney's designee within 24 hours after receipt of the information. The district attorney shall determine whether criminal prosecution is appropriate.

If the report received pursuant to G.S. 7A-543 involves abuse or neglect of a juvenile in day care, either in a ~~day-care~~ day care facility or a ~~day-care plan,~~ day care home, the Director shall notify the ~~North Carolina Child Day Care Commission~~ Department of Human Resources within 24 hours or on the next working day of receipt of the report. Upon completion of the investigation, the Director shall notify the ~~Commission~~ Department of the results of the investigation required by G.S. 7A-544. If the Director's initial investigation, carried out pursuant to G.S. 7A-544, of a report of abuse in a day care facility reveals that sexual abuse may have occurred, the Director shall notify the State Bureau of Investigation of the results of the initial investigation. The State Bureau of Investigation may send a

task force to investigate the alleged sexual abuse and gather evidence that may be presented at a criminal trial.

The Director of the Department of Social Services shall submit a report of alleged abuse or neglect to the central registry under the policies adopted by the Social Services Commission.

(b) If the Director finds evidence that a juvenile has been abused or neglected as defined by G.S. 7A-517 in a ~~day-care~~ day care facility or ~~plan,~~ home, he shall immediately so notify the ~~Child Day Care Commission~~ Department of Human Resources and the State Bureau of Investigation in such a way as does not violate the law guaranteeing the confidentiality of the records of the Department of Social Services."

Sec. 3. Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"*§ 114-15.3. Investigations of child sexual abuse in day care.*

The Director of the Bureau may form a task force to investigate and prepare evidence following a notification by the director of a county department of social services, pursuant to G.S. 7A-544, that the director's initial investigation of a report of abuse in a day care facility reveals that sexual abuse may have occurred."

Sec. 4. Sections 1, 2, and 3 of this act shall be implemented from funds available to the appropriate departments.

The Department of Human Resources, and the Department of Justice shall adopt rules to ensure that the three investigations of abuse in child day care undertaken by the director of the county department of social services, the Department of Human Resources, and the State Bureau of Investigation, do not interfere with one another. These rules shall also include development of methods by which the State Bureau of Investigation instructs the Department of Human Resources and the director of the county department of social services on ways to conduct their investigations without destroying evidence that the State Bureau of Investigation may be gathering for a possible criminal trial.

The Department of Human Resources and the Department of Justice shall make a joint report in writing to the Joint Legislative Commission on Governmental Operations by March 1, 1992, as to whether any legislation needs to be changed to effect this act.

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 703 **CHAPTER 594**

AN ACT TO AUTHORIZE WAKE COUNTY TO LEVY A ROOM OCCUPANCY TAX AND A PREPARED FOOD AND BEVERAGE TAX.

The General Assembly of North Carolina enacts:

Section 1. Intent. This act authorizes Wake County to levy a room occupancy tax and a prepared food and beverage tax.

Sec. 2. Definitions. The definitions in G.S. 105-164.3 apply to this act to the extent they are not inconsistent with the provisions of this act. The following definitions also apply in this act:

(1) Financing. Debt service, lease payments, or any other obligations or means of supporting capital costs, together with any related reserve requirements.

(2) Net proceeds. The gross proceeds of the taxes levied pursuant to this act less the cost to the county of administering and collecting the taxes as provided in Sections 10 and 11 of this act.

(3) Prepared food and beverage. Any food or beverage to which a retailer has added value or has altered its state (other than by cooling alone) by preparing, combining, dividing, heating, or serving, in order to make the food or beverage available for immediate human consumption.

(4) Retailer. A caterer or a retailer as defined in G.S. 105-164.3 as in effect on the effective date of this act.

(5) Taxable establishment. A hotel, motel, inn, tourist camp, or similar place that is subject to a room occupancy tax levied pursuant to this act and a retailer that sells prepared food or beverages and is subject to the prepared food and beverage tax levied pursuant to this act.

Sec. 3. Sales and Use Tax Statutes. The provisions of Article 5 and Article 9 of Chapter 105 of the General Statutes apply to this act to the extent they are not inconsistent with the provisions of this act.

Sec. 4. Occupancy Tax. The Wake County Board of Commissioners may, by resolution, levy a room occupancy tax of up to six percent (6%) of the gross receipts derived from the rental of any room, lodging, or accommodation furnished by a hotel, motel, inn, tourist camp, or similar place within the county that is subject to the State sales tax imposed under G.S. 105-164.4(a)(3). This tax does not apply to accommodations furnished by nonprofit charitable, educational, benevolent, or religious organizations when furnished in furtherance of their nonprofit purpose or to accommodations furnished to the same person for at least 90 consecutive days. Before levying

the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

Sec. 5. Prepared Food and Beverage Tax. The Wake County Board of Commissioners may, by resolution, levy a prepared food and beverage tax of up to one percent (1%) of the sales price of prepared food and beverages sold at retail for consumption on or off the premises by any retailer within the county that is subject to sales tax imposed by the State under G.S. 105-164.4(a)(1). Before levying the tax authorized in this section, the board of commissioners must hold a public hearing on the tax. Notice of the public hearing shall be advertised at least 10 days, but not more than 25 days, before the scheduled date of the hearing.

Before a tax may be enacted pursuant to this section, Wake County and the City of Raleigh must enter into an interlocal agreement pursuant to Article 20 of Chapter 160A of the General Statutes. The agreement shall contain, at the minimum, the type and general location of all capital projects to be funded in any way by the proceeds of the tax levied under this section. The agreement shall also contain a preliminary schedule for the completion of any projects to be so funded. If the city and the county are unable to approve and execute the required agreement within three years after the effective date of this act, this section is repealed.

Sec. 6. Exemptions. The prepared food and beverage tax does not apply to the following sales of prepared food and beverages:

(1) Prepared food and beverages served to residents in boarding houses and sold together on a periodic basis with rental of any sleeping room or lodging.
(2) Retail sales exempt from taxation under G.S. 105-614.13 on the effective date of this act.
(3) Retail sales through or by means of vending machines.
(4) Prepared food and beverages served by any taxable establishment subject to the occupancy tax levied pursuant to

this act if the charge for the prepared food or beverages is included in a single, nonitemized sales price together with the charge for rental of a room, lodging, or accommodation furnished by the taxable establishment.

(5) Prepared food and beverages furnished without charge by an employer to any employee.

(6) Retail sales by grocers or by grocery sections of supermarkets or other diversified retail establishments other than sales of prepared food and beverages in the delicatessen or similar department of the grocer or grocery section.

Sec. 7. Date of Levy. A tax levied under this act shall become effective on the date specified in the resolution or ordinance levying the tax. The levy of the prepared food and beverage tax may not become effective before January 1, 1993.

Sec. 8. Collection. Every operator of a taxable establishment shall, on and after the effective date of the levy of a tax under this act, collect the tax. The tax shall be stated and charged separately from the rental charge or sales price, shall be shown separately on the taxable establishment's sales records, and shall be paid by the purchaser to the taxable establishment as trustee for and on account of the county. The tax shall be added to the rental charge or sales price and shall be passed on to and collected from the purchaser instead of being borne by the taxable establishment.

For the convenience of each retailer and to facilitate the administration of this act, the county shall determine the amount to be added to the sales price of all sales subject to the prepared food and beverage tax. The amounts shall be set forth in a bracket system and distributed to each retailer responsible for collecting the prepared food and beverage tax. The use of the bracket system does not relieve the retailer from the duty and liability of collecting and remitting to the local administrative authority an amount equal to the prepared food and beverage tax levied by the county.

Sec. 9. Administration. The county shall administer and collect the taxes levied pursuant to this act. Wake County may contract with the City of Raleigh to perform these functions.

The taxes levied pursuant to this act are due and payable to the county in monthly installments on or before the fifteenth day of the month following the month in which the tax accrues. Every taxable establishment liable for the tax shall, on or before the fifteenth day of each month, prepare and render a return to the county. The county shall design, print, and furnish on request to all taxable establishments the necessary forms for filing returns and instructions to ensure the full collection of the tax.

Returns filed with the county pursuant to this act are not public records as defined by G.S. 132-1 and may not be disclosed except as required by law.

Sec. 10. Distribution and Use of Proceeds of Occupancy Tax. (a) Initial Deductions. It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 4 of this act will be at least three million eight hundred fifteen thousand dollars ($3,815,000). The county shall distribute the first three million eight hundred fifteen thousand dollars ($3,815,000) of the net proceeds of the tax levied under Section 4 of this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 12 of this act.

The county may deduct from the gross proceeds of the taxes collected pursuant to Section 4 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. For the first two years the tax levied under Section 4 of this act is in effect, before making the distributions provided in subsection (b), the county shall deduct from the net proceeds of the tax the sum of one hundred thousand dollars ($100,000) in each fiscal year and shall remit this sum to Wake Technical Community College. After the first two years the tax levied under Section 4 of this act is in effect, before making the distributions provided in subsection (b), the Board of Commissioners of Wake County may, in its discretion, deduct from the net proceeds of the tax the sum of one hundred thousand dollars ($100,000) in each fiscal year and remit this sum to Wake Technical Community College. Wake Technical Community College must use funds remitted to it under this subsection only to support its ongoing program of training individuals in hotel and motel management and in food service. Funds received by Wake Technical Community College under this subsection that have not been expended for this purpose at the end of each fiscal year shall revert to Wake County for distribution in the following fiscal year pursuant to this section and Section 12 of this act.

(b) Monthly Distributions; Use. The county shall make the distributions provided in this subsection by the twentieth day of the month following the month in which the tax is collected.

(1) Distribution to Raleigh. After deducting the amounts provided in subsection (a), the county shall transfer to the City of Raleigh an amount equal to forty-five and twenty-five one hundredths percent (45.25%) of the remaining net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.

a. The city may use the first six hundred eighty thousand dollars ($680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, maintenance, or operation of convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Greater Raleigh Convention and Visitor Bureau.

b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center Complex or similar facilities, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this subdivision b. only after the city and county have agreed on the amount and purpose of the expenditure. The county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.

(2) Distribution to Cary. After deducting the amount provided in subsection (a), the county shall transfer to the Town of Cary an amount equal to five percent (5%) of the remaining net proceeds of the tax levied under Section 4 of this act. The Town of Cary shall expend these proceeds for public relations and promotional activities for the town and for visitor-related programs and activities, including cultural programs, events, festivals, and other visitor-related programs.

(3) Distribution to Wake County. After deducting the amount provided in subsection (a), the county shall retain an amount equal to thirty-four and seventy-five one hundredths percent (34.75%) of the remaining net proceeds of the tax levied under Section 4 of this act. Wake County may expend these

proceeds only for the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.

(4) Distribution to Greater Raleigh Convention and Visitor Bureau. After deducting the amounts provided in subsection (a), the county shall remit fifteen percent (15%) of the remaining net proceeds to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

In the event that the amount distributed to the Greater Raleigh Convention and Visitor Bureau under this act is less than one million dollars ($1,000,000) in a fiscal year, the city and the county shall each pay to the Greater Raleigh Convention and Visitor Bureau a sum, derived from its expected portion of the proceeds of the taxes authorized in this act, equal to one-half of the difference between one million dollars ($1,000,000) and the amount received by the Bureau, so that the total revenue received by the Bureau equals at least one million dollars ($1,000,000) in each fiscal year.

Sec. 11. Distribution of Prepared Food and Beverage Tax. It is anticipated for allocation purposes that the annual net proceeds realized from the levy of the tax authorized by Section 5 of this act will be at least four million five hundred thousand dollars ($4,500,000). The county shall distribute the first four million five hundred thousand dollars ($4,500,000) of the net proceeds of the taxes levied under Section 5 of this act as provided in this section; the county shall distribute any proceeds in excess of this amount as provided in Section 13 of this act.

The county may deduct from the gross proceeds of the taxes collected pursuant to Section 5 of this act an amount not to exceed three percent (3%) of the gross proceeds to pay for the direct cost of administering and collecting the taxes. The county shall make the

distributions provided in this section by the twentieth day of the month following the month in which the tax is collected.

(1) Distribution to Raleigh. After deducting the amount provided above, the county shall transfer to the City of Raleigh an amount equal to forty-seven and seventy-five one hundredths percent (47.75%) of the net proceeds of each monthly collection. The net proceeds received by Raleigh shall be applied in accordance with the following priorities.

a. The city may use the first six hundred eighty thousand dollars ($680,000) of the net proceeds of the taxes levied under this act to fund the acquisition, construction, financing, debt servicing, renovation, maintenance, or operation of convention centers, civic centers, performing arts centers, coliseums, auditoriums, and museums; to provide off-street parking facilities for use in conjunction with such facilities; and to fund visitor-related programs and activities, including cultural programs, events or festivals, and convention and visitor programs and activities of the Convention and Visitor Bureau.

b. The city shall use any additional net tax proceeds received only for (i) the acquisition, construction, renovation, financing, debt service, maintenance, and operation of expansions and additions to the Raleigh Civic Center Complex, and (ii) the construction of sports, cultural, and arts facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in one or more reserve accounts by the city for future use in the range of activities allowed by this subsection. The city may make expenditures pursuant to this section only after the city and county have agreed on the amount and purpose of the expenditure. The county's approval of an expenditure must be evidenced by a resolution adopted by the board of commissioners.

(2) Distribution to Wake County. The county shall retain an amount equal to thirty-seven and twenty-five one hundredths percent (37.25%) of the net proceeds of the tax levied under Section 5 of this act. Wake County may expend these proceeds only for the planning, acquisition, renovation, or construction of the Raleigh Civic Center Complex or similar facilities or for construction of sports, cultural, and arts

facilities, including a coliseum to be built in conjunction with North Carolina State University at Raleigh, a performing arts theater, a visual arts program, and a children's museum. Any funds not spent in a fiscal year may be held in reserve accounts by the county for future use in the range of activities allowed by this subsection. The county may make expenditures pursuant to this subdivision only after the city and county have agreed on the amount and purpose of the expenditure. The city's approval of an expenditure must be evidenced by a resolution adopted by the city council.

(3) Distribution to Greater Raleigh Convention and Visitor Bureau. The county shall remit fifteen percent (15%) of the net proceeds of the tax levied under Section 5 of this act to the Greater Raleigh Convention and Visitor Bureau. The Greater Raleigh Convention and Visitor Bureau may expend these funds pursuant to the provisions of Section 15 of this act.

Sec. 12. Future Revenue Allocations of the Occupancy Tax. In the event that the annual net proceeds of the tax levied under Section 4 of this act exceed three million eight hundred fifteen thousand dollars ($3,815,000) in a fiscal year, the additional proceeds will be distributed as follows:

(1) Any net proceeds in excess of three million eight hundred fifteen thousand dollars ($3,815,000) but less than four million one dollars ($4,000,001) shall be allocated on the following basis:
   a. Ninety-five percent (95%) to the City of Raleigh for the purposes set out in Section 10 herein.
   b. Five percent (5%) to the Town of Cary for the purposes set out in Section 10 of this act.

(2) Any net proceeds above four million dollars ($4,000,000) and up to four million five hundred thousand dollars ($4,500,000) shall be distributed monthly on the following basis:
   a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.
   b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.

c. Forty-seven and five-tenths percent (47.5%) to the City of Raleigh to be used for the purposes set out in Section 10 of this act.

d. Twenty-two and five-tenths percent (22.5%) to Wake County for any use related to any of the purposes for which any local government is authorized by this act to expend tax proceeds.

(3) Any net proceeds above four million five hundred thousand dollars ($4,500,000) shall be distributed monthly on the following basis:

a. Twenty-five percent (25%) to the Raleigh Regional Convention and Visitor Bureau.

b. Five percent (5%) to the Town of Cary, at least one-half of which shall be used only for capital projects authorized under Section 10 or 11 of this act and the remainder of which shall be used for the purposes authorized in Section 10(b)(2) of this act.

c. Thirty-five percent (35%) to the City of Raleigh for any lawful purpose authorized by this act.

d. Thirty-five percent (35%) to Wake County for any lawful purpose authorized by this act.

Sec. 13. Future Revenue Allocations of the Prepared Food and Beverage Tax. In the event that the annual net proceeds of the tax levied under Section 5 of this act exceed four million five hundred thousand dollars ($4,500,000) in a tax year, the additional proceeds will be allocated according to the following schedule:

(1) Any additional net proceeds up to six million five hundred thousand dollars ($6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive seventy-five percent (75%) of the additional net proceeds for use in activities allowed under Section 10 of this act while the county will receive twenty-five percent (25%) of the net proceeds for use in any lawful activity authorized by this act.

(2) Any net proceeds in excess of six million five hundred thousand dollars ($6,500,000) shall be divided between the City of Raleigh and Wake County. The city shall receive sixty percent (60%) of the additional net proceeds for use in any lawful purpose authorized by this act while the county shall receive the remaining forty percent (40%) of the additional net proceeds for use in any lawful purpose authorized by this act.

Sec. 14. Restrictions on Certain Capital Projects. This section expires the earlier of (i) three years after the effective date of the first tax levied under this act or (ii) three and one-half years after the date

this act is ratified. Notwithstanding any other provision of this act, the proceeds of the taxes levied under this act may not be expended for the cost of any capital project other than (i) a coliseum to be built in conjunction with North Carolina State University at Raleigh, (ii) a civic center complex, (iii) a visual or performing arts center, or (iv) a children's museum, and off-street parking associated with these four projects. As used in this section, the term "cost" includes the cost of construction of a capital facility; planning, engineering, as well as architectural and consulting services, and any other expenses and charges relating to a new capital project.

Sec. 15. Greater Raleigh Convention and Visitor Bureau.

(1) When the board of county commissioners adopts a resolution levying the tax, the City of Raleigh shall take immediate action to adopt an ordinance establishing the Greater Raleigh Convention and Visitor Bureau. The Bureau shall be governed by a Board of Directors consisting of 12 members. This Bureau shall be the continuation of the existing Raleigh Convention and Visitor Bureau established pursuant to Chapter 850 of the Session Laws of 1985. At least three of the county's appointees shall reside in Raleigh and at least one of the county's appointees shall reside in Cary. The appointments shall be made as follows:

a. Five owners or operators of hotels, motels, or other taxable establishments, three of whom shall be elected by the Raleigh City Council and two of whom shall be elected by the Board of Commissioners of Wake County from a list of at least 10 nominees furnished by the Raleigh Hotel and Motel Association. The list of nominees shall include the names of at least three restaurant owners or operators.

b. Two representatives of tourist or convention related businesses, one appointed by the Raleigh City Council and one by the Wake County Board of Commissioners.

c. One member nominated by the Greater Raleigh Chamber of Commerce and appointed by the Wake County Board of Commissioners.

d. Four at-large members, two appointed by the City of Raleigh and two appointed by Wake County.

Members shall serve according to the ordinances and regulations of the city concerning service on city boards and commissions, except that members appointed by Wake County shall serve according to the ordinances and regulations of Wake County concerning service on county boards and commissions.

(2) Powers and Duties of Bureau. The Greater Raleigh Convention and Visitor Bureau may contract with any person, firm, or agency to advise and assist it in the promotion of travel, tourism, and conventions. The Bureau shall prepare an annual budget based on anticipated revenues and shall submit the budget to the Raleigh City Manager and Wake County Manager for processing and approval through the regular budget procedures of the city and the county. The Bureau shall make quarterly reports to the Raleigh City Council and the Wake County Board of Commissioners detailing its revenues, expenditures, and activities. The city or the county may audit the Bureau's financial records upon reasonable notice to the Bureau. At the end of each fiscal year, any funds of the Bureau not expended, or obligated or reserved as approved by the Raleigh City Council and the Wake County Board of Commissioners, shall be remitted equally to the City of Raleigh and Wake County for use in accordance with Section 10 of this act.

Sec. 16. Penalties. A person, firm, corporation, or association who fails or refuses to file a return and pay the tax due under this Part shall pay a penalty of ten dollars ($10.00) for each day's omission up to a maximum of two thousand dollars ($2,000) for each return. In case of failure or refusal to file the return or pay the tax for a period of 30 days after the time required for filing the return or paying the tax, there shall be an additional tax, as a penalty, of five percent (5%) of the tax due, with an additional tax of five percent (5%) for each additional month or fraction thereof until the tax is paid. The Wake County Board of Commissioners may, for good cause shown, compromise or forgive the additional tax penalties imposed by this section.

Sec. 17. Authority to Contract. Wake County and each municipality located in Wake County may contract with any person, agency, association, or nonprofit corporation to undertake or carry out the activities and programs for which the proceeds may be expended. All contracts entered into pursuant to this subsection shall require an annual financial audit of any funds expended and a performance audit of contractual obligations.

Sec. 18. Effect on existing taxes. The levy of a tax pursuant to this act repeals the authority of the county or a unit of local government in Wake County to enact an occupancy tax under any other local act.

Sec. 19. Repeal. The taxes levied pursuant to this authority may be repealed by the county by enacting an ordinance of repeal. No such repeal shall be effective until at least 180 days after the

passage of the repeal ordinance. Repeal of a tax levied under this act does not affect a liability for a tax that was attached before the effective date of the repeal, nor does it affect a right to a refund of a tax that accrued before the effective date of the repeal.

Sec. 20. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 728 **CHAPTER 595**

AN ACT TO PROVIDE FOR A COLLECTIBLE LIEN FOR SERVICES RENDERED BY PRIVATE RESCUE SQUADS THAT ARE SUBSTANTIALLY SUPPORTED BY MUNICIPALITIES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 44-51.4 reads as rewritten:

"*§ 44-51.4. Attachment or garnishment for county or city ambulance ~~service.~~ or county or city supported ambulance service.*

Whenever ambulance services are provided by a county, by a county-franchised ambulance service supplemented by county funds, or by a municipally owned and operated ambulance service or by an ambulance service supplemented by municipal funds and a recipient of such ambulance services or one legally responsible for the support of a recipient of such services fails to pay charges fixed for such services for a period of 90 days after the rendering of such services, the county or municipality providing the ambulance ~~services~~ services, or providing financial support to the ambulance service, may treat the amount due for such services as if it were a tax due to the county or municipality and may proceed to collect the amount due through the use of attachment and garnishment proceedings as set out in G.S. 105-368."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 790 **CHAPTER 596**

AN ACT TO EXEMPT THE TOWN OF FAISON FROM CERTAIN NOTICE REQUIREMENTS, TO EXTEND THE TOWN OF FAISON'S EXTRATERRITORIAL JURISDICTION, AND TO AUTHORIZE THE CITY OF BELMONT TO EXTEND ITS EXTRATERRITORIAL JURISDICTION TWO MILES FROM ITS CITY LIMITS.

The General Assembly of North Carolina enacts:

Section 1. Notwithstanding G.S. 160A-384 or any other provision of law, when a city is zoning property, in lieu of mailing a notice of the proposed zoning classification actions to any property owner or other person, a city may publish once a week for four successive calendar weeks in a newspaper having general circulation in the area a map showing the boundaries of the area which the city proposes to zone. Such map shall be not less than one-half of a newspaper page in size and shall be published on the dates that notice of hearing with regard to such proposed zoning actions is published pursuant to G.S. 160A-364. This notice shall only be effective for property owners that reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of said area, according to the address listed on the most recent property tax listing for the affected property, shall be notified by mail pursuant to G.S. 160A-384.

Sec. 2. In addition to the authority provided in G.S. 160A-360, the Town of Faison may exercise the powers granted in Article 19 of Chapter 160A of the General Statutes in an area beginning at the Town corporate limits at State Highway 403 West, extending one-half mile on each side of the center line of State Highway 403, extending in a westerly direction to and stopping at the midpoint of state highway 403, one-half mile west of the Interstate Highway 40 western right-of-way boundary.

Sec. 3. Notwithstanding the requirements of G.S. 160A-360(a), the City of Belmont may exercise the powers granted by Article 19 of Chapter 160A of the General Statutes within a defined area, within Gaston County, extending not more than two miles beyond the City of Belmont corporate limits.

Sec. 4. Sections 1 and 2 of this act apply to the Town of Faison only. Section 3 of this act applies to the City of Belmont only.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 809 **CHAPTER 597**

AN ACT TO PROVIDE THAT THE LAWS RELATING TO MOTOR VEHICLES APPLY WITHIN THE SEVEN LAKES COMMUNITY IN MOORE COUNTY.

The General Assembly of North Carolina enacts:

Section 1. The provisions of Chapter 20 of the General Statutes relating to the use of the highways of the State and the operation of

motor vehicles are applicable to the streets, roadways, and alleys on the properties owned by or under the control of the Seven Lakes Landowners Association, Inc., or the members of the Seven Lakes Landowners Association, Inc. For purposes of this act, streets, roadways, and alleys in the Seven Lakes Community shall have the same meaning as highways and public vehicular areas pursuant to G.S. 20-4.01. A violation of any of those laws is punishable as prescribed by those laws.

Sec. 2. This act is enforceable by any company policeman appointed under Chapter 74A of the General Statutes, certified by the North Carolina Criminal Justice Education and Training Standards Commission, and employed by the Seven Lakes Landowners Association, Inc.

Sec. 3. This act shall not be construed as in any way interfering with the ownership and control of the streets, roadways, and alleys of the Seven Lakes Landowners Association, Inc., or its members as is now vested by law in that association or its members. The speed limits within the Seven Lakes Community shall be the same as those in effect at the time of ratification of this act. Any proposed change in the speed limit shall be submitted to and approved by the Moore County Board of Commissioners. Pursuant to G.S. 20-141, the Moore County Board of Commissioners may authorize by ordinance higher or lower speeds.

Sec. 4. This act applies only to Moore County.

Sec. 5. This act is effective upon ratification and shall expire the earlier of July 1, 1994 or upon incorporation of the Seven Lakes Community.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 1039 **CHAPTER 598**

AN ACT TO FACILITATE THE CONSTRUCTION OF FACILITIES IN AND THE EXTENSION OF NATURAL GAS SERVICE TO UNSERVED AREAS AND TO REVISE THE PROCEDURES FOR GAS COST ADJUSTMENTS FOR NATURAL GAS LOCAL DISTRIBUTION COMPANIES.

Whereas, the 1989 General Assembly in Chapter 338 of the 1989 Session Laws directed the North Carolina Utilities Commission to require the franchised natural gas local distribution companies to file reports with the Commission detailing their plans for providing natural gas service in areas of the State where natural gas service is not available, and directed the Commission and the Public Staff to provide

independent analyses and summaries of those reports together with status reports of natural gas service in the State to the Joint Legislative Utility Review Committee; and

Whereas, the reports of the utilities, the Commission and the Public Staff indicate that the construction of facilities and the extension of natural gas service in some areas of the State may not be economically feasible with traditional funding methods; and

Whereas, the 1991 General Assembly finds it necessary and in the public interest to authorize special funding methods, including the use of supplier refunds and customer surcharges, to facilitate the expansion of natural gas service; and

Whereas, the 1991 General Assembly further finds that the expansion of natural gas service benefits all customers in all customer classes of a local distribution company so that all customers should pay a fair and reasonably proportionate share of the cost of expanding natural gas service; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. G.S. 62-2 is amended by adding a new subdivision to read:

"(9) To facilitate the construction of facilities in and the extension of natural gas service to unserved areas in order to promote the public welfare throughout the State and to that end to authorize the creation of an expansion fund for each natural gas local distribution company to be administered under the supervision of the North Carolina Utilities Commission."

Sec. 2. Chapter 62 of the General Statutes is amended by adding a new section to read:

"*§ 62-158. Natural Gas Expansion.*

(a) In order to facilitate the construction of facilities in and the extension of natural gas service to unserved areas, the Commission may, after a hearing, order a natural gas local distribution company to create a special natural gas expansion fund to be used by that company to construct natural gas facilities in areas within the company's franchised territory that otherwise would not be feasible for the company to construct. The fund shall be supervised and administered by the Commission. Any applicable taxes shall be paid out of the fund.

(b) Sources of funding for a natural gas local distribution company's expansion fund may, pursuant to the order of the Commission, after hearing, include:

(1) Refunds to a local distribution company from the company's suppliers of natural gas and transportation services pursuant

to refund orders or requirements of the Federal Energy Regulatory Commission;

(2) Expansion surcharges by the local distribution company charged to customers purchasing natural gas or transportation services throughout that company's franchised territory; provided, however, in determining the amount of any surcharge the Commission shall take into account the prices of alternative sources of energy and the need to remain competitive with those alternative sources, and the need to maintain just and reasonable rates for natural gas and transportation services for all customers served by the company; provided further that the expansion surcharge shall not be greater than fifteen cents (15¢) per dekatherm; and

(3) Other sources of funding approved by the Commission.

(c) The application of all such funds to expansion projects shall be pursuant to the order of the Commission. The Commission shall ensure that all projects to which expansion funds are applied are consistent with the intent of this section and G.S. 62-2(9). In determining economic feasibility, the Commission shall employ the net present value method of analysis on a project specific basis. Only those projects with a negative net present value shall be determined to be economically infeasible for the company to construct. In no event shall the Commission authorize a distribution from the fund of an amount greater than the negative net present value of any proposed project as determined by the Commission. If at any time a project is determined by the Commission to have become economically feasible, the Commission may require the company to remit to the expansion fund or to customers appropriate portions of the distributions from the fund related to the project, and the Commission may order such funds to be returned with interest in a reasonable amount to be determined by the Commission. Utility plant acquired with expansion funds shall be included in the local distribution company's rate base at zero cost except to the extent such funds have been remitted by the company pursuant to order of the Commission.

(d) The Commission, after hearing, may adopt rules to implement this section, including rules for the establishment of expansion funds, for the use of such funds, for the remittance to the expansion fund or to customers of supplier and transporter refunds and expansion surcharges or other funds that were sources of the expansion fund, and for appropriate accounting, reporting and ratemaking treatment. The Commission and Public Staff shall report to the Joint Legislative Utility Review Committee on the operation of any expansion funds in conjunction with the reports required under G.S. 62-36A."

Sec. 3. G.S. 105-130.5(b) is amended by adding a new subdivision to read:

"(16) The amount of natural gas expansion surcharges collected by a natural gas local distribution company under G.S. 62-158."

Sec. 4. G.S. 105-116(c) reads as rewritten:

"(c) Gas ~~Surcharges.~~ Special Charges. Gross receipts of a natural gas company do not include ~~special~~ the following:

(1) Special charges collected within this State by the company pursuant to drilling and exploration surcharges approved by the North Carolina Utilities Commission, if the surcharges are segregated from the other receipts of the company and are devoted to drilling, exploration, and other means to acquire additional supplies of natural gas for the account of natural gas customers in North Carolina and the beneficial interest in the surcharge collections is preserved for the natural gas customers paying the surcharges under rules established by the Commission.

(2) Natural gas expansion surcharges imposed under G.S. 62-158."

Sec. 5. G.S. 105-164.4(a)(4a) reads as rewritten:

"(4a) At the rate of three percent (3%) of the gross receipts derived by a utility from sales of electricity, piped natural gas, or local telecommunications service as defined by G.S. 105-120(e). Gross receipts from sales of piped natural gas shall not include natural gas expansion surcharges imposed under G.S. 62-158. A person who operates a utility is considered a retailer under this Article."

Sec. 6. G.S. 158-7.1(b)(5) reads as rewritten:

"(5) A county or city may ~~extend~~ construct, extend or own utility facilities or may provide for or assist in the extension of utility services to be furnished to an industrial facility, whether the utility is publicly or privately owned."

Sec. 7. G.S. 62-133(f) is repealed; provided, however, that the repeal of G.S. 62-133(f) shall not affect the right of any natural gas local distribution company to recover any costs previously approved by the Commission.

Sec. 8. Chapter 62 of the General Statutes is amended by adding a new section to read:

"*§ 62-133.4. Gas cost adjustment for natural gas local distribution companies.*

(a) Rate changes for natural gas local distribution companies occasioned by changes in the cost of natural gas supply and

transportation may be determined under this section rather than under G.S. 62-133(b), (c), or (d).

(b) From time to time, as changes in the cost of natural gas require, each natural gas local distribution company may apply to the Commission for permission to change its rates to track changes in the cost of natural gas supply and transportation. The Commission may, without a hearing, issue an order allowing such rate changes to become effective simultaneously with the effective date of the change in the cost of natural gas or at any other time ordered by the Commission. If the Commission has not issued an order under this subsection within 120 days after the application, the utility may place the requested rate adjustment into effect. If the rate adjustment is finally determined to be excessive or is denied, the utility shall make refund of any excess, plus interest as provided in G.S. 62-130(e), to its customers in a manner ordered by the Commission. Any rate adjustment under this subsection is subject to review under subsection (c) of this section.

(c) Each natural gas local distribution company shall submit to the Commission information and data for an historical 12-month test period concerning the utility's actual cost of gas, volumes of purchased gas, sales volumes, negotiated sales volumes, and transportation volumes. This information and data shall be filed on an annual basis in the form and detail and at the time required by the Commission. The Commission, upon notice and hearing, shall compare the utility's prudently incurred costs with costs recovered from all the utility's customers that it served during the test period. If those prudently incurred costs are greater or less than the recovered costs, the Commission shall, subject to G.S. 62-158, require the utility to refund any over-recovery by credit to bill or through a decrement in its rates and shall permit the utility to recover any deficiency through an increment in its rates.

(d) Nothing in this section prohibits the Commission from investigating and changing unreasonable rates as authorized by this Chapter, nor does it prohibit the Commission from disallowing the recovery of any gas costs not prudently incurred by a utility.

(e) As used in this section, the word 'cost' or 'costs' shall be defined by Commission rule or order and may include all costs related to the purchase and transportation of natural gas to the natural gas local distribution company's system."

Sec. 9. The Joint Legislative Utility Review Committee shall study the matter of gas cost adjustment for natural gas local distribution companies, including whether any changes in legislation are needed, and shall report its findings, together with any recommendations it may have, including recommendations for the

enactment of legislation, to the 1992 Regular Session of the 1991 General Assembly.

Sec. 10. G.S. 105-130.5(a) is amended by adding a new subdivision to read:

"(12) The amount allowed under the Code for depreciation or as an expense in lieu of depreciation for utility plant acquired by a natural gas local distribution company, to the extent the plant is included in the company's rate base at zero cost in accordance with G.S. 62-158."

Sec. 11. This act is effective upon ratification, but the enactment of Sections 7 and 8 of this bill shall not have any effect on any matter presently before any court.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 1163 **CHAPTER 599**

AN ACT AUTHORIZING THE CONSTRUCTION AND FINANCING OF A CERTAIN CAPITAL IMPROVEMENT PROJECT AT APPALACHIAN STATE UNIVERSITY.

The General Assembly of North Carolina enacts:

Section 1. The Board of Governors of The University of North Carolina may construct the capital improvement project described in Section 2 of this act and may finance the project by issuing revenue bonds and revenue bond anticipation notes to be repaid from the revenue described in Section 3 of this act.

Sec. 2. The project authorized by this act consists of the construction of an economically and environmentally more efficient power plant to service Appalachian State University, the construction of supporting systems, and related construction and maintenance to the power plant currently operated by Appalachian State University.

Sec. 3. To finance the project authorized by this act, the Board of Governors of The University of North Carolina is authorized, after obtaining approval from the Director of the Budget, to issue revenue bonds and revenue bond anticipation notes of The University of North Carolina. In deciding whether to approve revenue bonds or revenue bond anticipation notes, the Director of the Budget may consult with the Advisory Budget Commission. Except as modified by this act, Part 4 of Article 1 of Chapter 116 of the General Statutes governs the issuance and terms of these bonds or bond anticipation notes. The Board of Governors is authorized to pledge any of the following revenues in payment of the principal of and interest on any bonds or bond anticipation notes issued under this act:

(1) Revenue derived from the project and revenue derived from any future improvements, betterments, or extensions of the project, including the following:
   a. Amounts appropriated from the General Fund to or on behalf of Appalachian State University for utility service.
   b. Revenue derived from the sale of utility service to all utility customers.
(2) Revenue derived from any system, facility, plant, works, instrumentalities, or properties improved, bettered, or extended by The University of North Carolina in connection with Appalachian State University.

Sec. 4. At the request of The University of North Carolina Board of Governors and upon determining that it is in the best interest of the State to do so, the Director of the Budget may authorize an increase or decrease in the scope of a project authorized by this act. In making a determination of whether to authorize a change in scope, the Director of the Budget may consult with the Advisory Budget Commission.

Sec. 5. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

H.B. 1298 **CHAPTER 600**

AN ACT AFFECTING THE ELECTION OF THE SAMPSON COUNTY BOARD OF COMMISSIONERS.

The General Assembly of North Carolina enacts:

Section 1. Section 1 of Chapter 969 of the 1989 Session Laws reads as rewritten:

"Section 1. The Board of Commissioners of Sampson County shall consist of ~~five~~ seven members. Sampson County is divided into five districts as set out in Section 3 of this act. The qualified voters of each district shall nominate candidates and elect a member who resides in that district for the seat apportioned to that district. All the qualified voters of Sampson County shall nominate candidates and elect two at-large members of the Board. The primary and election shall be held and conducted in accordance with the general election laws of this State except as otherwise provided herein."

Sec. 2. If this ratified act receives, before the beginning of the filing period for notices of candidacy for the 1992 elections, whatever approval from whatever authority of the federal government is legally necessary for its implementation, then Section 2 of Chapter 969 of the 1989 Session Laws reads as rewritten:

"Sec. 2. (a) The terms of office of all the members of the Sampson County Board of Commissioners shall expire on the first Monday in December of 1990.

(b) In 1990 and quadrennially thereafter members shall be elected from Districts 1, 3, and 5 for four-year terms. In 1990, members shall be elected from Districts 2 and 4 for two-year terms. In 1992 and quadrennially thereafter, members shall be elected from Districts 2 and 4 for four-year terms.

(c) In 1992, the two at-large members of the board shall be elected in a two-seat contest. The candidate with the highest number of votes in the general election shall serve a four-year term and the candidate with the second highest number of votes shall serve a transitional two-year term. In subsequent elections, the two at-large members shall be elected to four-year terms on a staggered basis."

Sec. 3. If this ratified act does not receive, before the beginning of the filing period for notices of candidacy for the 1992 elections, whatever approval from whatever authority of the federal government is legally necessary for its implementation, but does receive such approval by the beginning of the filing period for notices of candidacy for the 1994 elections, then Section 2 of Chapter 969 of the 1989 Session Laws reads as rewritten:

"Sec. 2. (a) The terms of office of all the members of the Sampson County Board of Commissioners shall expire on the first Monday in December of 1990.

(b) In 1990 and quadrennially thereafter members shall be elected from Districts 1, 3, and 5 for four-year terms. In 1990, members shall be elected from Districts 2 and 4 for two-year terms. In 1992 and quadrennially thereafter, members shall be elected from Districts 2 and 4 for four-year terms.

(c) In 1994, the two at-large members of the board shall be elected in a two-seat contest. The candidate with the highest number of votes in the general election shall serve a four-year term and the candidate with the second highest number of votes shall serve a transitional two-year term. In subsequent elections, the two at-large members shall be elected to four-year terms on a staggered basis."

Sec. 4. This act is effective upon ratification; provided that Section 1 of this act shall be implemented according to Section 2 or Section 3 of this act, whichever section applies; provided further that, if the method of election provided in Section 2 or Section 3 of this act is disapproved after ratification by whatever authority of the federal government controls final approval of this act, then the two at-large members of the Board of Commissioners added by this act shall be elected to four-year terms in a two-seat race in 1994 and every four years thereafter.

In the General Assembly read three times and ratified this the 8th day of July, 1991.

S.B. 16 **CHAPTER 601**

AN ACT TO DIVIDE NORTH CAROLINA INTO TWELVE CONGRESSIONAL DISTRICTS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 163-201 reads as rewritten:

"*§ 163-201. Congressional districts specified.*

(a) For the purpose of nominating and electing members of the House of Representatives of the Congress of the United States in ~~1982~~ 1992 and every two years thereafter, the State of North Carolina shall be divided into ~~11~~ 12 districts as follows:

~~FIRST DISTRICT: Beaufort, Bertie, Camden, Carteret, Chowan, Craven, Currituck, Dare, Gates, Greene, Hertford, Hyde, Lenoir, Martin, Northhampton, Pamlico, Pasquotank, Perquimans, Pitt, Tyrrell, and Washington Counties.~~

~~SECOND DISTRICT: Caswell, Durham, Edgecombe, Granville, Halifax, Nash, Person, Vance, Warren, and Wilson Counties; and the O'Neals Township in Johnston County.~~

~~THIRD DISTRICT: Bladen, Duplin, Harnett, Jones, Lee, Onslow, Pender, Sampson, and Wayne Counties; the following townships of Johnston County: Banner, Bentonsville, Beulah, Boon Hill, Clayton, Cleveland, Elevation, Ingrams, Meadow, Micro, Pine Level, Pleasant Grove, Selma, Smithfield, Wilders, and Wilson Mills; and the following townships of Moore County: 1 (Carthage), 4 (Ritters), 5 (Deep River), 6 (Greenwood), and 10 (Little River).~~

~~FOURTH DISTRICT: Chatham, Franklin, Orange, Randolph, and Wake Counties.~~

~~FIFTH DISTRICT: Alexander, Alleghany, Ashe, Forsyth, Rockingham, Stokes, Surry, and Wilkes Counties.~~

~~SIXTH DISTRICT: Alamance, Davidson, and Guilford Counties.~~

~~SEVENTH DISTRICT: Brunswick, Columbus, Cumberland, New Hanover, and Robeson Counties.~~

~~EIGHTH DISTRICT: Anson, Cabarrus, Davie, Hoke, Montgomery, Richmond, Rowan, Scotland, Stanly, and Union Counties; and the following townships of Moore County: 2 (Bensalem), 3 (Sheffields), 7 (McNeills), 8 (Sand Hill), and 9 (Mineral Springs); and the following townships of Yadkin County: Boonville, East Bend, Fall Creek, Forbush, Knobs, and Liberty.~~

~~NINTH DISTRICT: Iredell, Lincoln, and Mecklenburg Counties; and the following townships of Yadkin County: Buck Shoal and Deep Creek.~~

~~TENTH DISTRICT: Burke, Caldwell, Catawba, Cleveland, Gaston, and Watauga Counties; and the following townships of Avery County: Banner Elk, Beech Mountain, Cranberry, Linville, and Wilsons Creek.~~

~~ELEVENTH DISTRICT: Buncombe, Cherokee, Clay, Graham, Haywood, Henderson, Jackson, McDowell, Macon, Madison, Mitchell, Polk, Rutherford, Swain, Transylvania, and Yancey Counties; and the following townships of Avery County: Altamont, Roaring Creek, and Toe River.~~

District 1: Beaufort County: Washington township: Remainder not in District 3; Bertie County, Chowan County, Craven County: Cove City *, Dover *, Fort Barnwell *, Harlowe *, Havelock *: Tract 9612: Block Group 1: Block 106, Water Block 199F; Croatan *: Tract 9611: Block Group 1: Water Block 199C; Grantham *: Tract 9610, Block Group 2: Water Block 299; Block Group 3: Water Block 399; Block Group 4: Water Block 499A, Water Block 499B; Tract 9611: Block Group 1: Water Block 199D; First Ward *, Second Ward *, Fourth Ward *, Fifth Ward *, Clarks *, Woodrow *, Jasper *; Durham County: Bragtown School *, Burton School *, C.C. Spaulding School *, Durham Co. Main Library *, Durham High School *, Holloway Street School *, Holton Junior High School *, Lakewood School *, Moose Lodge *, Morehead School *, North Durham School Building *, Pearson School *, Pearsontown School *, R.N. Harris *, Shephard Junior H.S. *, Watts Street School *, Weaver Street Community Center *, White Rock Baptist Church *, Y.E. Smith School *, Campus Precinct *, Homestead Heights Baptist *, DNOE VALLEY SCHOOL NONCONTIGUOUS *, Gorman Ruritan Club *; Edgecombe County: Precinct 1-1 *, Precinct 2-1 *, Precinct 3-1 *, Precinct 4-1 *, Precinct 5-1 *, Precinct 6-1 *, Precinct 7-1 *, Precinct 10-1 *, Precinct 12-1 *, Precinct 12-2 *, Precinct 12-4 *, Precinct 12-5 *; Franklin County: Franklinton, Hayesville, Sandy Creek; Gates County, Granville County: Butner *, Antioch *, Oak Hill *, Credle *, East Oxford *, South Oxford *, West Oxford Elementary *, Sassafras Fork *, Tally Ho *, Walnut Grove *; Greene County: Snow Hill Town Satellite, Ormonds, Sugg; Halifax County: Hollister *, Conoconnara *, Enfield #1 *, Enfield #2 *, Enfield #3 *, Halifax *, Littleton #1 *, Hobgood *, Palmyra *, Roseneath *, Scotland Neck #1 *, Scotland Neck #2 *, Weldon #1 *, Weldon #2 *, Weldon #3 *; Hertford County, Jones County: Beaver Creek *, Cypress Creek *: Remainder not in District 2; Pollocksville

*, Trenton *, White Oak *; Lenoir County: Contentnea *, Kinston #1 *, Kinston #2 *, Kinston #6 *, Kinston #7 *, Kinston #8 *, Sandhill *; Martin County, Nash County: Castalia *, Griffins *, Mannings #1 *, No. Whitakers #1 *, Rocky Mount #3 *, Rocky Mount #4 *, Battleboro *; Northampton County, Pasquotank County, Perquimans County, Pitt County: Arthur *, Ayden West *, Ayden East *, Belvoir *, Bethel *, Carolina *, Falkland *, Farmville West *, Farmville East *, Fountain *, Grimesland *, Pactolus *, Greenville #1 *, Greenville #2, Greenville #3 *, Greenville #4 *, Greenville #5 *, Greenville #2 Noncontiguous; Tyrrell County, Vance County: Hilltop, Middleburg, Townsville, Williamsboro, East Henderson I, North Henderson I, North Henderson II, South Henderson I; Warren County, Washington County, Wilson County: Gardners *, Saratoga *, Toisnot *, Wilson A *, Wilson B *, Wilson C *, Wilson F *, Wilson G *, Wilson H *, Wilson N *, Wilson Q *.

District 2: Durham County: Neal Junior H.S. *, Brogden Junior H.S. *, Club Blvd. School *, Edison Johnson Community Center *, E.K. Powe School *, Fire Station #6 *, Forest Hills Club House *, Hillandale School *, Holy Infant Catholic Church *, Hope Valley School *, Multi-Purpose Building/Duke *, NC School of Science & Math *, Rogers-Herr Junior H.S. *, St. Stephens/Parish Hall *, Cole Mill Church of Christ *, Carrington Junior H.S. *, Eno Valley School *, Northern H.S. *, Mangum School *, Rougemont United Methodist *, Bethesda Ruritan Club *, Oak Grove School *, Durham Academy Gym *, Five Oaks Seventh Day Adventist Church *, Jordan H.S. *, Nelson Community Center *, Parkwood School *; Edgecombe County: Precinct 1-2 *, Precinct 1-3 *, Precinct 1-4 *, Precinct 8-1 *, Precinct 9-1 *, Precinct 11-1 *, Precinct 12-3 *, Precinct 13-1 *, Precinct 14-1 *; Franklin County: Dunn, Harris, Youngsville, Gold Mine, Cedar Rock, Cyprus Creek, Louisburg Country, Pilot, Louisburg City, Pearces; Granville County: Brassfield *, Creedmoor *, Corinth *, Salem *; Greene County: Arba, Bull Head, Carrs, Fort Run, Shine, Hookerton, Jason, Olds, Snow Hill Rural, Snow Hill Town, Snow Hill Town Sat B, Speights Bridge; Halifax County: Ringwood *, Butterwood *, Faucett *, Littleton #2 *, Roanoke Rapids #1 *, Roanoke Rapids #2 *, Roanoke Rapids #3 *, Roanoke Rapids #4 *, Roanoke Rapids #5 *, Roanoke Rapids #6 *, Roanoke Rapids #7 *, Roanoke Rapids #8 *, Roanoke Rapids #9 *, Roanoke Rapids #10 *, Roanoke Rapids #11 *; Harnett County, Hoke County: Fort Bragg; Johnston County: North Banner *, South Banner *, West Banner *, Bentonville *, North Beulah *, South Beulah *, North Boon Hill *, South Boon Hill *, South Elevation *, East Ingrams *, West Ingrams *, North Meadow *, South Meadow *, Micro *, Pine

Level *, East Selma *, West Selma *, East Smithfield *, North Smithfield *, West Smithfield *, Wilson's Mills *; Jones County: Chinquapin *, Cypress Creek *: Tract 9802: Block Group 1: Block 125B; Block Group 2: Block 208B, Block 221B; Tract 9803: Block Group 3: Block 310A, Block 311A, Block 315, Block 316, Block 317, Block 318, Block 319, Block 320, Block 321A, Block 322, Block 323, Block 325, Block 327, Block 328, Block 329, Block 330, Block 331; Block Group 4: Block 447A, Block 448A, Block 449A, Block 451A, Block 452, Block 453, Block 454, Block 455, Block 456, Block 457, Block 458, Block 459, Block 460, Block 461, Block 463, Block 464, Block 465, Block 466, Block 467, Block 468A, Block 469A, Block 472A, Block 473A; Tuckahoe *; Lee County, Lenoir County: Falling Creek *, Institute *, Kinston #3 *, Kinston #4 *, Kinston #5 *, Kinston #9 *, Moseley Hall *, Neuse *, Pink Hill #1 *, Pink Hill #2 *, Southwest *, Trent #1 *, Trent #2 *, Vance *, Woodlington *; Moore County: Township 1, Carthage, Township 2, Bensalem, Township 3, Sheffields, Township 4, Ritters, Township 5, Deep River, Township 6, Greenwood, Township 8, Sand Hill, Township 10, Little River; Nash County: Bailey *, Coopers *, Drywells *, Ferrells *, Jacksons *, Mannings #2 *, Nashville *, No. Whitakers #2 *, Oak Level, Oak Level Noncontiguous, Red Oak *, Rocky Mount #1 *, Rocky Mount #2 *, Rocky Mount #5 *, Rocky Mount #6 *, Rocky Mount #7 *, Stony Creek #1, Stony Creek Noncontiguous A, Stony Creek Noncontiguous B; Vance County: Dabney, Kittrell, Sandy Creek, Watkins, East Henderson II, South Henderson II, West Henderson I, West Henderson IIA, West Henderson IIB; Wake County: New Light #1 *; Wilson County: Black Creek *, Cross Roads *, Old Fields *, Spring Hill *, Stantonsburg *, Taylors *, Wilson D *, Wilson E *, Wilson I *, Wilson J *, Wilson K *, Wilson L *, Wilson M *, Wilson P *.

District 3: Beaufort County: Bath township, Chocowinity township, Long Acre township, Pantego township, Richland township, Washington township: Tract 9902: Block Group 1: Block 185B, Block 190, Block 191; Tract 9904: Block Group 3: Block 317D, Block 362, Block 363, Block 365, Block 366B; Block Group 4: Block 401, Block 426; Tract 9905: Block Group 5: Block 522A, Block 528A; Bladen County; Camden County, Carteret County; Craven County: Ernul *, Epworth *, Vanceboro *, Bridgeton *, Truitt *, Croatan *: Remainder not in District 1; Havelock *: Remainder not in District 1; Grantham *: Remainder not in District 1; Third Ward *, Sixth Ward *, Country Club *, Rhems *, River Bend *, Trent Woods *; Currituck County; Dare County; Duplin County, Hyde County; Onslow County: West Northwoods *, Jacksonville, New River *,

Brynn Marr *, Catherine Lake *, Haw Branch *, Gum Branch *, Richlands *, Harris Creek *: Remainder not in District 7; Swansboro *, Mills *, Mortons *, Northeast *, Camp Lejeune Military Base 11, VTD ZZZZ: Tract 0001: Block Group 1: Block 104A, Block 125A, Block 126, Block 127, Block 128, Block 129A, Block 130, Block 131, Block 132, Block 134A, Block 135A, Block 137A, Block 138, Block 139A, Block 140, Block 141, Block 142, Block 143, Block 144A, Block 144B, Block 144C, Block 145, Block 146, Block 147, Block 148, Block 149, Block 150, Block 151, Block 152, Block 153, Block 154, Block 155, Block 156, Block 157, Block 158, Block 159, Block 160, Block 161, Block 162, Block 163, Block 164, Block 165, Block 166, Block 167, Block 168, Block 169A, Block 170, Block 171A, Block 172, Block 173, Block 174, Block 175, Block 176, Block 177A, Block 177B, Block 178, Block 179, Block 185, Block 186, Block 196A, Block 196B, Block 197A, Block 197B; Tract 0002: Block Group 6: Block 627A, Block 628, Block 629A, Block 629B, Block 630A, Block 631, Block 632, Block 633, Block 634A, Block 635A, Block 648A, Block 649A; Tract 0012: Block Group 1: Block 101A, Block 102A, Block 103, Block 104, Block 105, Block 106, Block 107A, Block 108A, Block 109A; Tract 0013: Block Group 1: Block 107; Pamlico County; Pender County: North Burgaw *, South Burgaw *, Canetuck *, Caswell *, Columbia *, Grady *, Middle Holly *, Upper Holly *, Long Creek *, Penderlea *, Lower Union *, Upper Union *, Rocky Point *; Pitt County: Chicod *, Grifton *, Simpson *, Swift Creek *, Winterville West *, Winterville East *, Greenville #6 *, Greenville #7 *, Greenville #8 *, Greenville #9 *, Greenville #10 *, Greenville #11 *, Greenville #12 *, Greenville #13 *; Sampson County, Wayne County.

District 4: Chatham County: Bynum *, East Mann's Chapel *, Cape Fear *, East Pittsboro *, West Pittsboro *, Hadley *, Hickory Mountain *, New Hope *, East Williams *, West Williams *; Johnston County: East Clayton *, West Clayton *, Cleveland *, North Elevation *, North O'Neals *, South O'Neals *, Pleasant Grove *, Wilders *; Orange County: Orange Grove *, White Cross *, Battle Park *, Coker Hills *, Coles Store *, Colonial Heights *, Country Club *, Dogwood Acres *, East Franklin *, Eastside *, Estes Hills *, Foxcroft *, Glenwood *, Greenwood *, Kings Mill *, Lincoln *, Lions Club *, Mason Farm *, North Carrboro *, Norside *, Owasa *, Patterson *, Ridgefield *, St. John *, Town Hall *, Weaver Dairy *, Westwood *, Efland *: Remainder not in District 6; Eno *, St. Marys *, Cameron Park *, Grady Brown *, Hillsborough *, West Hillsborough *; Wake County: Remainder not in District 2.

District 5: Alleghany County; Ashe County; Davidson County: Central *, Cotton *, Southmont *, Hampton *, Lexington No. 1 *: Tract 0614: Block Group 4: Block 403, Block 410B, Block 411D, Block 412B; Lexington No. 2 *, Ward No. 1 *, Ward No. 2 *, Ward No. 3 *, Ward No. 4 *, Ward No. 5 *, Ward No. 6 *, Reedy Creek *; Forsyth County: Abbotts Creek #1 *, Abbotts Creek #2 *, Abbotts Creek #3 *, Belews Creek *, Bethania #1 *, Bethania #2 *, Bethania #3 *, Broadbay #1 *, Broadbay #2 *, Clemmonsville #3 *, Kernersville #1 *, Kernersville #2 *, Kernersville #3 *, Kernersville #4 *, Lewisville #1 *, Lewisville #2 *, Middlefork #2 *, Middlefork #3 *, Old Richmond *, Old Town #2 *, Old Town #3 *, Salem Chapel #1 *, Salem Chapel #2 *, South Fork #2 *, South Fork #3 *, Vienna #1 *, Vienna #2 *, Vienna #3 *, Ardmore Baptist Church *, Ashley Middle School *, Bethabara Moravian Church *, Bible Wesleyan Church *, Bishop McGuinness *, Bolton Swimming Center *, Brown/Douglas Recreation *, Brunson Elementary School *, Calvary Baptist Church *, Carver High School *, Christ Moravian Church *, Country Club Fire St. *, Covenant Presbyterian Church *, East Winston Library *, Easton Elementary School *, First Christian Church *, Forest Hill Fire Station *, Forest Pk. Elementary School *, Forsyth Tech W. Camp. *, 14th Street Recreation Center *, Greek Orthodox Church *, Hanes Community Center *, Happy Hill Recreation Center *, Hill Middle School *, Jefferson Elementary School *, Kennedy Middle School *, Latham Elementary School *, Lowrance Middle School *, M. L. King Recreation Center *, Memorial Coliseum *, Messiah Moravian Church *, Miller Park Recreation Center *, Mineral Springs F. St *, Mt. Sinai Church *, Mt. Tabor High School *, New Hope United Methodist Church *, Old Town Presbyterian Church *, Parkland High School *, Parkway United Church *, Philo Middle School *, Polo Park Recreation Center *, Reynolds High School Gym *, Sherwood Forest Elementary School *, South Fork Elem School *, St. Andrews United Methodist *, St. Anne's Episcopal Church *, Summit School *, Trinity Moravian Church *, Trinity United Methodist Church *, Whitaker Elementary School *, Winston Lake Family YMCA *; Rockingham County, Rowan County: East Spencer *, Spencer *, Trading Ford, East Ward I *, East Ward II *, North Ward I *, South Ward *, West Ward I *, West Ward II *, West Ward III *; Stokes County: Big Creek township, Danbury township: Remainder not in District 6; Peters Creek township, Quaker Gap township, Yadkin township; Surry County, Watauga County.

District 6: Alamance County, Caswell County, Chatham County: Albright *, West Mann's Chapel *, Bennett *, Bonlee *, Harpers

Crossroads *, Goldston *, Haw River *, North Siler City *, South Siler City *, Oakland *; Guilford County, Orange County: Carr *, Cedar Grove *, Tolars *, Cheeks *, Efland *: Tract 0108: Block Group 4: Block 463B, Block 466B, Block 488; Caldwell *; Person County, Stokes County: Beaver Island township, Danbury township: Tract 0702: Block Group 3: Block 344, Block 345, Block 354; Meadows township, Sauratown township, Snow Creek township.

District 7: Brunswick County; Columbus County; Cumberland County: Beaver Dam *, Westarea *, Cedar Creek *, Judson *, Stedman *, Cross Creek #1 *, Cross Creek #3 *, Cross Creek #4 *, Cross Creek #5 *, Cross Creek #6 *, Cross Creek #7 *, Cross Creek #8 *, Cross Creek #9 *, Cross Creek #10 *, Cross Creek #11 *, Cross Creek #12 *, Cross Creek #13 *, Cross Creek #14 *, Cross Creek #15 *, Cross Creek #16 *, Cross Creek #17 *, Cross Creek #18 *, Cross Creek #19 *, Cross Creek #20 *, Cross Creek #21, Cross Creek #22 *, Cross Creek #23 *, Cross Creek #2 *, Eastover *, Vander *, Alderman *, Sherwood *, Pearces Mill #2 *, Pearces Mill #4 *: Remainder not in District 8; Hope Mills #1 *, Seventy First #3 *; New Hanover County, Onslow County: Cross Roads *, East Northwoods *, Half Moon *, Tar Landing *, Harris Creek *: Tract 0003: Block Group 5: Block 508, Block 509A, Block 509B, Block 510A, Block 511A, Block 521, Block 523, Block 525; Folkstone *, Haws Run *, Holly Ridge *, Sneads Ferry *, Verona *, Bear Creek *, Hubert *, Camp Lejeune Military Base 1, Camp Lejeune Military Base 2, Camp Lejeune Military Base 3, Camp Lejeune Military Base 4, Camp Lejeune Military Base 5, Camp Lejeune Military Base 6, Camp Lejeune Military Base 7, Camp Lejeune Military Base 8, Camp Lejeune Military Base 9, Camp Lejeune Military Base 10, Camp Lejeune Military Base 12, Camp Lejeune Military Base 13, Camp Lejeune Military Base 14; Pender County: Lower Topsail *, Upper Topsail *, Scott's Hill *, Surf City *; Robeson County.

District 8: Anson County, Cabarrus County: Township 1, Box 1 *, Township 1, Box 2 *, Township 1, Box 3 *, Township 2, Box 1 *, Township 2, Box 2 *, Township 2, Box 3 *, Township 2, Box 4 *, Township 3 *, Township 4, Box 1, Township 4, Box 2 *, Township 4, Box 4 *, Township 4, Box 5 *, Township 4, Box 6 *, Township 4, Box 7 *, Township 4, Box 8 *, Township 4, Box 1 Noncontiguous A, Township 4, Box 1 Noncontiguous B, Township 4, Box 1 Noncontiguous C, Township 5 *, Township 6 *: Remainder not in District 12; Township 8 *, Township 9 *, Township 10 *, Township 11 *, Township 12, Box 1 *, Township 12, Box 2 *, Township 12,

Box 3 *, Township 12, Box 4 *, Township 12, Box 5 *, Township 12, Box 6 *, Township 12, Box 7 *, Township 12, Box 8 *, Township 12, Box 9 *; Cumberland County: Black River *, Linden *, Long Hill *, Cross Creek #24 *, Wade *, Manchester *, Spring Lake *, Pearces Mill #3 *, Pearces Mill #4 *: Tract 0017: Block Group 2: Block 209, Block 214, Block 215, Block 217; Block Group 4: Block 406, Block 407; Cumberland #1 *, Cumberland #2 *, Hope Mills #2 *, Beaver Lake *, Brentwood *, Cottonade *, Montclair *, Morganton Road #1 *, Morganton Road #2 *, Seventy First #1 *, Seventy First #2 *; Hoke County: Allendale, Antioch, Blue Springs, Puppy Creek, McCain, Raeford # 4, Stonewall, Buchan, Raeford # 1, Raeford # 2, Raeford # 3, Radford # 5, Rockfish; Montgomery County; Moore County: Township 7, McNeill, Township 9, Mineral Springs; Richmond County, Scotland County, Stanly County; Union County.

District 9: Lincoln County: Westport, Daniels/Vale, Iron Station, Hickory Grove, North Brook I/II, Asbury, Salem, Boger City, Crouse, Denver, Heavners, Lincolnton/North, Lincolnton/South, Long Shoals, Lithia, Love Memorial, Lowesville, Pumpkin Center, Triangle; Mecklenburg County: Remainder not in District 12.

District 10: Avery County; Burke County: Drexel #1 *, Drexel #2 *, Drexel #3 *, Icard #1 *, Icard #2 *, Icard #3 *, Icard #4 *, Icard #5 *, Jonas Ridge *, Lovelady #1 *, Lovelady #2 *, Lovelady #3 *, Lovelady #4 *, Lower Creek *, Lower Fork *, Morganton #1 *, Morganton #3 *, Morganton #4 *, Morganton #5 *, Morganton #6 *, Morganton #7 *, Morganton #8 *, Morganton #9 *, Morganton #10 *, Quaker Meadow #2 *, Silver Creek #1 *, Silver Creek #2 *, Silver Creek #3 *, Silver Creek #4 *, Smoky Creek *, Upper Creek *, Upper Fork *; Caldwell County: Hudson #1 *, Hudson #2 *, Johns River *, Kings Creek *, Gamewell #1 *, Gamewell #2 *, Lenoir #1 *, Lenoir #2 *, Lenoir #3 *, Lenoir #4 *, Little River *, Lovelady-Rhodhiss *, Lovelady #2 *, Sawmills *, Lower Creek #1 *, Lower Creek #2 *, Lower Creek #3 *, Lower Creek #4 *, North Catawba *, Wilson Creek *: Tract 0309: Block Group 1: Block 127D, Block 127E, Block 162B, Block 164B, Block 165, Block 166, Block 167, Block 168, Block 169, Block 170, Block 171, Block 172, Block 181, Block 182, Block 183, Block 184, Block 185, Block 186B; Catawba County, Cleveland County, Gaston County, Lincoln County: Buffalo Shoals, North Brook III; Mitchell County, Rutherford County: Golden Valley township, Logan Store township; Yancey County: Ramseytown *: Remainder not in District 11.

District 11: Buncombe County, Burke County: Linville #1 *, Linville #2 *, Quaker Meadow #1 *; Cherokee County; Clay County; Graham County; Haywood County; Henderson County, Jackson County; McDowell County; Macon County; Madison County; Polk County; Rutherford County: Camp Creek township, Chimney Rock township, Colfax township, Cool Spring township, Duncans Creek township, Gilkey township, Green Hill township, High Shoals township, Morgan township, Rutherfordton township, Sulphur Springs township, Union township; Swain County; Transylvania County; Yancey County: Burnsville *, Cane River *, Egypt *, Ramseytown *: Tract 9602: Block Group 1: Block 101B, Block 108D, Block 114, Block 120, Block 121; Green Mountain *, Jack's Creek *, Brush Creek *, Crabtree *, South Toe *, Pensacola *, Price's Creek *.

District 12: Alexander County; Cabarrus County: Township 4, Box 3 *, Township 4, Box 9 *, Township 6 *: Tract 0406: Block Group 2: Block 201, Block 202, Block 217, Block 219; Tract 0417: Block Group 2: Block 243A, Block 250A, Block 252A, Block 253A, Block 297; Township 7 *; Caldwell County: Globe *, Mulberry *, Patterson *, Wilson Creek *: Tract 0309: Block Group 1: Block 106B, Block 107B, Block 108B, Block 108C, Block 124B, Block 125B, Block 126B, Block 173, Block 174, Block 175, Block 176, Block 177, Block 178, Block 179, Block 180; Yadkin Valley *; Davidson County: Abbotts Creek *, Alleghany *, Arcadia *, Boone *, Holly Grove *, Liberty *, Denton *, Emmons *, Silver Valley *, Healing Springs *, Jackson Hill *, Lexington No. 1 *: Remainder not in District 5; Lexington No. 3 *, Lexington No. 4 *, Welcome *, Midway *, Reeds *, Tyro *, Silver Hill *, Thomasville No. 1 *, Thomasville No. 2 *, Thomasville No. 3 *, Thomasville No. 4 *, Thomasville No. 5 *, Thomasville No. 7 *, Thomasville No. 8 *, Thomasville No. 9 *, Thomasville No. 10 *, Yadkin College *; Davie County; Forsyth County: Clemmonsville #1 *, Clemmonsville #2 *, Lewisville #3 *; Iredell County, Mecklenburg County: LEM *: All except Tract 0062.02: Block Group 2: Block 254;; Randolph County, Rowan County: Bradshaw *, Enochville *, Blackwelder Park *, Bostian School *, N. China Grove *, S. China Grove *, East Kannapolis *, West Kannapolis *, East Landis *, West Landis *, Cleveland *, Franklin *, Barnhardt Mill *, Rockwell *, Bostian Crossroads *, Faith, Faith Noncontiguous, Locke *, Sumner *, Morgan I *, Morgan II *, Mt. Ulla *, Gold Knob *, Granite Quarry *, Hatters Shop *, Milford Hills *, West Innes *, North Ward II *, Trading Ford Noncontiguous A, Scotch Irish *, Steele *, Unity *; Wilkes County, Yadkin County.

~~(b) The name and boundaries of townships specified in this section are as they were legally defined and in effect as of January 1, 1980, and recognized in the 1980 United States Census.~~

(b) The names and boundaries of townships, precincts (voting tabulation districts), tracts, block groups, and blocks, specified in this section are as they were legally defined and recognized in the 1990 U.S. Census, except as provided in subsection (c) of this section. Boundaries are as shown on the IVTD Version of the United States Bureau of the Census 1990 TIGER Files, with such modifications as made by the Legislative Services Office and shown on its computer database as of May 1, 1991, to reflect census blocks divided by prior district boundaries, and precincts added or modified as outlined in subsection (c) of this section.

(c) For Guilford County, precinct boundaries for High Point Precincts 20, 23, and 24 are as modified by the Guilford County Board of Elections and shown on the Legislative Services Office computer database as of May 1, 1991.

For Mecklenburg County, precinct boundaries are as altered by the Mecklenburg County Board of Elections as reported to the Legislative Services Office and shown on the Legislative Services Office computer database as of May 1, 1991.

For Wake County:

(1) St. Marys Precinct #7 is as created by the Wake County Board of Elections out of St. Marys Precinct #4;

(2) Raleigh 01-27 Part is an area reported by the Bureau of the Census as part of Raleigh 01-23 but has been put by the Wake County Board of Elections in Raleigh 01-27; and

(3) VTD ZZZZ has been assigned to the appropriate parts of Wake Forest #1 and Wake Forest #2,

all as shown on the Legislative Services Office computer database as of May 1, 1991.

For Anson, Bertie, Camden, Caswell, Franklin, Gates, Greene, Hertford, Hoke, Lee, Lincoln, Martin, Mitchell, Northampton, Pasquotank, Perquimans, Person, Tyrrell, Vance, Warren, and Yadkin Counties, precincts are as shown on maps on file with the Legislative Services Office as of May 1, 1991, except that:

(1) In Anson County, Lanesboro #1 and Lanesboro #2 are listed together as Lanesboro #1 and #2;

(2) In Vance County, where West Henderson II is not contiguous, the northerly part is listed as West Henderson IIA and the southerly part as West Henderson IIB;

(3) In Perquimans County, computer VTD Code 0005 (Tract 9801, Block 550A) is actually part of Belvidere Precinct and is districted with it notwithstanding any description above;

(4) In Greene County, Snow Hill Town Satellite is Tract 9503, Block 301A which is a part of Snow Hill Town Precinct entirely surrounded by Sugg Precinct and is districted with Sugg Precinct notwithstanding any description above;

(5) In Greene County, Snow Hill Town Sat B is Tract 9503, Block 224B which is a part of Snow Hill Town Precinct entirely surrounded by Snow Hill Rural Precinct and is districted with Snow Hill Rural Precinct notwithstanding any description above;

(6) Any listing in any district of Mecklenburg Precinct XMC2 Noncontiguous shall be disregarded, as that precinct does not exist;

(7) In Martin County, any listing of VTDs not defined consists of Tract 9705, Block 413 (which is in Poplar Point Precinct), Tract 9704, Block 202 (which is in Goose Nest Precinct), and Tract 9706, Block 168A (which is in Robersonville #2 Precinct), and those blocks are districted with those respective precincts regardless of any listing above;

(8) In New Hanover County, Tract 123.98, Blocks 307B, 308A, 309, 310A, 311A, and 312A, listed by the Census Bureau as part of VTD ZZZZ, are districted by this section as part of Wilmington #2.

If any precinct or township boundaries are changed, such changes shall not change the boundaries of the Congressional Districts, which shall remain the same.

In the case where any individual blocks are listed above, the district allocation of unlisted water blocks shall be as found on maps and statistical reports of the districts on file with the Secretary of State.

(d) If this section does not specifically assign any area within North Carolina to a district, and the area is:

(1) Entirely surrounded by a single district, the area shall be deemed to have been assigned to that district;

(2) Contiguous to two or more districts, the area shall be deemed to have been assigned to that district which contains the least population according to the 1990 United States Census; or

(3) Contiguous to only one district and to another state or the Atlantic Ocean, the area shall be deemed to have been assigned to that district."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 34 **CHAPTER 602**

AN ACT TO ABOLISH THE USE OF THE RULE OF 78s AS IT PERTAINS TO INSTALLMENT LOANS SECURED BY REAL PROPERTY OR MOBILE HOMES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 25A-2(a) reads as rewritten:

"(a) Except as provided in subsection (c) of this section, a 'consumer credit sale' is a sale of goods or services in which

(1) The seller is one who in the ordinary course of business regularly extends or arranges for the extension of consumer credit, or offers to extend or arrange for the extension of such credit,

(2) The buyer is a natural person,

(3) The goods or services are purchased primarily for a personal, family, household or agricultural purpose,

(4) Either the debt representing the price of the goods or services is payable in installments or a finance charge is imposed, and

(5) The amount financed does not exceed twenty-five thousand dollars ($25,000) or, in the case of a debt secured by real property or a manufactured home as defined in G.S. 143-145(7), regardless of the amount financed."

Sec. 2. Chapter 25A of the General Statutes is amended by adding the following new section to read:

"*§ 25A-32.1. Unearned finance charge credits on prepayment of loans secured by real property and mobile home loans.*

(a) Notwithstanding any statutory or contractual provision to the contrary, in a consumer credit installment sale contract with an amount financed of five thousand dollars ($5000.00) or more secured by real estate or by a residential manufactured home as defined in G.S. 143-145(7), any buyer may satisfy the debt in full at any time before maturity, and in so satisfying the debt, shall be credited with all unearned finance charges as computed on the simple interest or actuarial method.

(b) If a seller obtains a judgment on a debt arising out of a consumer credit installment sale described in subsection (a) of this section, or if the seller forecloses or repossesses the collateral securing the debt, the seller shall credit the buyer with all unearned finance charges as computed on the simple interest or actuarial method as if the payment in full had been made on the date the judgment was obtained or 15 days after the foreclosure or repossession occurred, whichever is earlier. If the seller obtains a judgment and

repossesses the collateral, the seller shall credit the buyer with all unearned finance charges as if payment in full had been made on the date of the judgment or 15 days after the repossession, whichever occurs earlier."

Sec. 3. This act becomes effective July 1, 1991, and applies to contracts made on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 401 **CHAPTER 603**

AN ACT TO ALLOW THE EMPLOYMENT SECURITY COMMISSION TO SHARE CERTAIN INFORMATION WITH THE STATE CONTROLLER.

The General Assembly of North Carolina enacts:

Section 1. G.S. 96-4(t) reads as rewritten:

"(t) Confidentiality of Records, Reports, and Information Obtained from Claimants and Employers.

(1) Confidentiality of Information Contained in Records and Reports. -- (i) Except as hereinafter otherwise provided, it shall be unlawful for any person to obtain, disclose, or use, or to authorize or permit the use of any information which is obtained from any employing unit or individual pursuant to the administration of this Chapter. (ii) Any claimant or employer or their legal representatives shall be supplied with information from the records of the Employment Security Commission to the extent necessary for the proper presentation of claims or defenses in any proceeding under this Chapter. Notwithstanding any other provision of law, any claimant may be supplied, subject to restrictions as the Commission may by regulation prescribe, with any information contained in his payment record or on his most recent monetary determination, and any individual, as well as any interested employer, may be supplied with information as to the individual's potential benefit rights from claim records. (iii) Subject to restrictions as the Commission may by regulation provide, information from the records of the Employment Security Commission may be made available to any agency or public official for any purpose for which disclosure is required by statute or regulation. (iv) The Commission may, in its sole discretion, permit the use of information in its possession by public officials in the performance of their public duties.

(v) The Commission shall release the payment and the amount of unemployment compensation benefits upon receipt of a subpoena in a proceeding involving child support. (vi) The Commission shall furnish to the State Controller any information the State Controller needs to prepare and publish a comprehensive annual financial report of the State.

(2) Job Service Information. -- (i) Except as hereinafter otherwise provided it is unlawful for any person to disclose any information obtained by the North Carolina State Employment Service Division from workers, employers, applicants, or other persons or groups of persons in the course of administering the State Public Employment Service Program. Provided, however, that if all interested parties waive in writing the right to hold such information confidential, the information may be disclosed and used but only for those purposes that the parties and the Commission have agreed upon in writing. (ii) The Employment Service Division shall make public, through the newspapers and any other suitable media, information as to job openings and available applicants for the purpose of supplying the demand for workers and employment. (iii) The Labor Market Information Division shall collect, collate, and publish statistical and other information relating to the work under the Commission's jurisdiction; investigate economic developments, and the extent and causes of unemployment and its remedies with the view of preparing for the information of the General Assembly such facts as in the Commission's opinion may make further legislation desirable. (iv) Except as provided by Commission regulation, any information published pursuant to this subsection (II) shall not be published in any manner revealing the identity of the applicant or the employing unit.

(3) Penalties for Disclosure or Improper Use. -- Any person violating any provision of this section may be fined not less than twenty dollars ($20.00) nor more than two hundred dollars ($200.00), or imprisoned for not longer than 90 days, or both.

(4) Regulations. -- The Commission may provide by regulation for procedures by which requests for information will be considered and the methods by which such information may be disclosed. The Commission is authorized to provide

by regulation for the assessment of fees for securing and copying information released under this section.

(5) Privileged Status of Letters and Reports and Other Information Relating to Administration of this Chapter. -- All letters, reports, communication, or any other matters, either oral or written, including any testimony at any hearing, from the employer or employee to each other or to the Commission or any of its agents, representatives, or employees, which letters, reports, or other communication shall have been written, sent, delivered, or made in connection with the requirements of the administration of this Chapter, shall be absolutely privileged communication in any civil or criminal proceedings except proceedings pursuant to or involving the administration of this Chapter and except proceedings involving child support and only for the purpose of establishing the payment and amount of unemployment compensation benefits.

(6) Nothing in this subsection (t) shall operate to relieve any claimant or employing unit from disclosing any information required by this Chapter or by regulations promulgated thereunder.

(7) Nothing in this subsection (t) shall be construed to prevent the Commission from allowing any individual or entity to examine and copy any report, return, or any other written communication made by that individual or entity to the Commission, its agents, or its employees.

(7a) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a reimbursable basis only, to officers and employees of the Department of Housing and Urban Development and to representatives of a public housing agency as defined in Section 303(i)(4) of the Social Security Act, any information from the records of the Employment Security Commission with respect to individuals applying for or participating in any housing assistance program administered by the Department of Housing and Urban Development who have signed an appropriate consent form approved by the Secretary of Housing and Urban Development. It is the purpose of this paragraph to assure the Employment Security Commission's compliance with Section 303(i)(1) of the Social Security Act and it shall be construed accordingly.

(7b) Nothing in this subsection (t) shall be construed to prevent the Commission from disclosing, upon request and on a

reimbursable basis, to the Secretary of Health and Human Services, any information from the records of the Employment Security Commission as may be required by Section 303(h)(1) of the Social Security Act. It is the purpose of this paragraph to assure compliance with Section 303(h)(1) of the Social Security Act and it shall be construed accordingly.

(8) Any finding of fact or law, judgment, determination, conclusion or final order made by an adjudicator, appeals referee, commissioner, the Commission or any other person acting under authority of the Commission pursuant to the Employment Security Law is not admissible or binding in any separate or subsequent action or proceeding, between a person and his present or previous employer brought before an arbitrator, court or judge of this State or the United States, regardless of whether the prior action was between the same or related parties or involved the same facts.

Provided, however, any finding of fact or law, judgment, determination, conclusion, or final order made by an adjudicator, appeals referee, commissioner, the Commission or any other person acting under the authority of the Commission pursuant to the Employment Security Law shall be admissible in proceedings before the North Carolina Industrial Commission."

Sec. 2. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 642 **CHAPTER 604**

AN ACT TO PROVIDE THAT THE DEPARTMENT OF TRANSPORTATION SHALL ISSUE RULES GOVERNING THE ISSUANCE OF SPECIAL PERMITS FOR VEHICLES OF EXCESSIVE SIZE, WEIGHT, OR NUMBER OF UNITS.

The General Assembly of North Carolina enacts:

Section 1. G.S. 20-119(a) reads as rewritten:

"(a) The Department of Transportation may, in their discretion, upon application, for good cause being shown therefor, issue a special permit in writing authorizing the applicant to operate or move a vehicle of a size or weight or number of units exceeding a maximum specified in this Article upon any highway under the jurisdiction and for the maintenance of which the body granting the permit is

responsible. However, the Department is not authorized to issue any permit to operate or move over the State highways twin trailers, commonly referred to as double bottom trailers. Every such permit shall be carried in the vehicle to which it refers and shall be open to inspection by any peace ~~officer;~~ officer. ~~and it shall be a misdemeanor for any person to violate any of the terms or conditions of such special permit: Provided, the~~ The in writing and for good cause shown, authorizing the applicant to move a vehicle over the streets of such city or town, the size or weight exceeding the maximum expressed in this Article. The Department of Transportation shall issue rules to implement this section, but no rule shall provide that the permits issued pursuant to this section may be invalidated by law enforcement personnel."

Sec. 2. G.S. 20-119 is amended by adding a new subsection to read:

"(d) Violation of any of the terms or conditions of a special permit issued under this section shall be a misdemeanor. A person convicted of a misdemeanor under this section shall be subject to a fine of not more than five hundred dollars ($500.00)."

Sec. 3. This act becomes effective October 1, 1991, and applies to offenses occurring on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 669 **CHAPTER 605**

AN ACT TO AUTHORIZE A PORK PROMOTION ASSESSMENT.

The General Assembly of North Carolina enacts:

Section 1. Chapter 106 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 66.

"Pork Promotion Assessment Act.

"§ *106-790. Title.*

This Article shall be known as the 'Pork Promotion Assessment Act.'

"§ *106-791. Purpose.*

It is in the public interest for the State to enable producers of porcine animals to assess themselves in order to raise funds to promote the interests of the pork industry.

"§ *106-792. Definitions.*

The following definitions apply in this Article:

(1) Association. -- The North Carolina Pork Producers Association, Inc., a North Carolina nonprofit corporation.

(2) Buyer. -- Any person engaged as (i) a commission merchant, (ii) an auction market, or (iii) a livestock market in the business of receiving porcine animals for sale on commission for or on behalf of a pork producer.

(3) Department. -- The North Carolina Department of Agriculture.

(4) Market. -- To sell, slaughter for sale, or otherwise dispose of a porcine animal in commerce.

(5) Person. -- An individual, a partnership, a firm, or a corporation.

(6) Porcine animal. -- Swine raised for seed stock, market hogs, or slaughter.

(7) Pork producer. -- A person who (i) is a North Carolina resident, (ii) owns, manages, or has a financial interest in pork production, and (iii) is actively involved in the production of porcine animals.

"*§ 106-793. Referendum.*

(a) The Association may conduct among pork producers a referendum upon the question of whether an assessment shall be levied on porcine animals sold in this State.

(b) The Association shall determine:

(1) The amount of the proposed assessment.

(2) The time and place of the referendum.

(3) Procedures for conducting the referendum and counting of votes.

(4) Any other matters pertaining to the referendum.

(c) The amount of the proposed assessment shall be stated on the referendum ballot. The amount may not exceed five cents (5¢) for each porcine animal sold in this State. If the assessment is approved in the referendum, the Association may set the assessment at an amount equal to or less than the amount stated on the ballot. If the Association sets a lower amount than the amount approved by referendum, it may increase the amount annually without a referendum by no more than one cent (1¢) for each porcine animal. The increased rate may not exceed the amount approved by referendum and may not exceed the maximum allowable rate of five cents (5¢) for each porcine animal.

(d) All pork producers may vote in the referendum. Any dispute over eligibility to vote or any other matter relating to the referendum shall be determined by the Association. The Association shall make reasonable efforts to provide pork producers with notice of the referendum and an opportunity to vote.

"*§ 106-794. Payment and collection of assessment.*

(a) The assessment shall not be collected unless more than half of the votes cast in the referendum are in favor of the assessment. If more than half of the votes cast in the referendum are in favor of the assessment, then the Association shall notify the Department of the amount of the assessment and the effective date of the assessment. The Department shall notify all buyers and pork producers of the assessment.

(b) Each pork producer must pay an assessment on each porcine animal sold to a buyer.

(c) A buyer of a porcine animal shall collect the assessment when buying a porcine animal by deducting the assessment from the price paid for the animal. The buyer shall remit collected assessments to the Department no later than the 10th day of the following month. The Department shall provide forms to buyers for reporting the assessment. If the total assessments collected by a buyer in a month are less than twenty-five dollars ($25.00), the buyer may keep the assessments until the total amount due is at least twenty-five dollars ($25.00) or the end of the quarter, whichever comes first. All buyers shall file at least one report in each calendar quarter, regardless of the amount due.

(d) A buyer of porcine animals shall keep records of the number of porcine animals purchased and the date purchased. All information or records regarding purchases of porcine animals by individual buyers shall be kept confidential by employees or agents of the Department and the Association, and shall not be disclosed except by court order.

(e) The Association may bring an action to recover any unpaid assessments, plus the reasonable costs, including attorney fees, incurred in the action.

"*§ 106-795. Use of assessments; Refunds.*

(a) The Department shall remit all funds collected under this Article to the Association at least monthly. The Association shall use the funds to promote the interests of the pork industry. In order to prevent duplication of effort, these funds shall not be used for activities funded under 7 U.S.C. Chapter 79, Pork Promotion, Research, and Consumer Information.

(b) A pork producer may request a refund of an assessment deducted from the sales price of a porcine animal sold by the producer by submitting a written request for a refund to the Association within 30 days after the buyer of the animal collected the assessment. A refund request must be accompanied by proof of payment of the assessment satisfactory to the Association. The Association shall mail a refund to the producer within 30 days of receipt of a properly documented refund request.

"*§ 106-796. Termination of assessment.*

Upon receipt of a petition signed by at least ten percent (10%) of the pork producers in North Carolina known to the Association, the Department shall notify the Association, and the Association shall, within six months, conduct a referendum upon the question of continuing the assessment. If a majority of the votes cast in the referendum are against continuing the assessment, or if the Association fails to conduct a referendum within the six-month period, the assessment expires at the end of the six-month period. If a majority of the votes cast in the referendum are in favor of continuing the assessment, then no subsequent referendum shall be held for at least three years."

Sec. 2. G.S. 106-550 reads as rewritten:

"§ *106-550. Policy as to promotion of use of, and markets for, farm products.*

It is declared to be in the interest of the public welfare that the North Carolina farmers who are producers of livestock, poultry, field crops and other agricultural products, including cattle, ~~swine,~~ sheep, broilers, turkeys, commercial eggs, peanuts, cotton, potatoes, peaches, apples, berries, vegetables and other fruits of all kinds, as well as bulbs and flowers and other agricultural products having a domestic or foreign market, shall be permitted and encouraged to act jointly and in cooperation with growers, handlers, dealers and processors of such products in promoting and stimulating, by advertising and other methods, the increased production, use and sale, domestic and foreign, of any and all of such agricultural commodities. The provisions of this Article, however, shall not include the agricultural products of tobacco, strawberries, ~~or~~ strawberry plants, or porcine animals, with respect to which separate provisions have been made."

Sec. 3. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 689 **CHAPTER 606**

AN ACT TO CLARIFY THE LAW REGARDING CREATION OF A JOINT TENANCY WITH RIGHT OF SURVIVORSHIP.

The General Assembly of North Carolina enacts:

Section 1. G.S. 41-2 reads as rewritten:

"§ *41-2. Survivorship in joint tenancy defined; proviso as to partnership.*

Except as otherwise provided herein, in all estates, real or personal, held in joint tenancy, the part or share of any tenant dying shall not descend or go to the surviving tenant, but shall descend or be vested in the heirs, executors, or administrators, respectively, of the tenant

so dying, in the same manner as estates held by tenancy in common: Provided, that estates held in joint tenancy for the purpose of carrying on and promoting trade and commerce, or any useful work or manufacture, established and pursued with a view of profit to the parties therein concerned, are vested in the surviving partner, in order to enable him to settle and adjust the partnership business, or pay off the debts which may have been contracted in pursuit of the joint business; but as soon as the same is effected, the survivor shall account with, and pay, and deliver to the heirs, executors and administrators respectively of such deceased partner all such part, share, and sums of money as he may be entitled to by virtue of the original agreement, if any, or according to his share or part in the joint concern, in the same manner as partnership stock is usually settled between joint merchants and the representatives of their deceased partners. Nothing in this section prevents the creation of a joint tenancy with right of survivorship in real or personal property if the instrument creating the joint tenancy expressly provides for a right of survivorship, and no other document shall be necessary to establish said right of survivorship. Upon conveyance to a third party by less than all of three or more joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created among the third party and the remaining joint tenants, who remain joint tenants with right of survivorship as between themselves. Upon conveyance to a third party by one of two joint tenants holding property in joint tenancy with right of survivorship, a tenancy in common is created between the third party and the remaining joint tenant. A conveyance of any interest in real property by a party to himself and one or more other parties, as joint tenants with right of survivorship, creates in the parties that interest, if the instrument of conveyance expressly provides for a joint tenancy with right of survivorship."

Sec. 2. A conveyance of any interest in real property occurring between January 1, 1991, and the effective date of this act by a party to himself and one or more other parties that expressly provides for a joint tenancy with a right of survivorship shall have created such an interest.

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

S.B. 817 **CHAPTER 607**

AN ACT TO PROTECT BONA FIDE PURCHASERS FOR VALUE OF REAL PROPERTY AGAINST JUDGMENTS FOR WHICH

THE STATUTE OF LIMITATIONS IS SUSPENDED FOR THE PERIOD OF EXEMPTION BY REQUIRING THE ORDER DESIGNATING EXEMPT PROPERTY TO BE FILED IN THE REGISTER OF DEEDS OFFICE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 1C-1603(c) reads as rewritten:

"(c) Statement by the Debtor. -- When proceedings are instituted, the debtor must file with the court a schedule of:

(1) His assets, including their location;

(2) His debts and the names and addresses of his creditors;

(3) The property which he desires designated as exempt.

The form for the statement must be substantially as follows:

NORTH CAROLINA		IN THE GENERAL COURT
..... COUNTY		OF JUSTICE DISTRICT
		COURT DIVISION
		CvD
Judgment Creditor	)	SCHEDULE OF DEBTOR'S
	)	PROPERTY
vs.	)	AND REQUEST TO
	)	SET ASIDE EXEMPT
Judgment Debtor	)	PROPERTY

I, ..., being duly sworn do depose and say:
(fill in your name)

1. That I am a citizen and resident of ..... County, North Carolina;

2. That I was born on.....;
(date of birth)

3. That I am (married to.....)
(spouse's name)
.....;
(not married)

4. That the following persons live in my household and are in substantial need of my support:

NAME	RELATIONSHIP TO DEBTOR	AGE
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

(Use additional space, as necessary)

5. That (I own) (I am purchasing) (I rent) (choose one; mark out the other choices) a (house) (trailer) (apartment) (choose one; mark out the other choices) located at .....
which is my residence.
(address, city, zip code)

6. That I (do) (do not) own any other real property. If other real property is owned, list that property on the following lines; if no other real property is owned, mark 'not applicable' on the first line.

.....
.....
.....
.....

7. That the following persons are, so far as I am able to tell, all of the persons or companies to whom I owe money:

.....
.....
.....
.....
.....

8. That I wish to claim my interest in the following real or personal property that I use as a residence or my dependent uses as a residence. I also wish to claim my interest in the following burial plots for myself or my dependents. I understand that my total interest claimed in the residence and burial plots may not exceed $7,500. I understand that I am not entitled to this exemption if I take the homestead exemption provided by the Constitution of North Carolina in other property. I understand that if I wish to claim more than one parcel exempt I must attach additional pages setting forth the following information for each parcel claimed exempt.

~~Address.....~~
~~Names of Owners of Record.....~~
~~Estimated Value.....~~
~~Amount of Liens.....~~
~~Amount of Debtor's Interest.....~~

Property Location:
County..... Township .....
Street Address .....
Legal Description:
Number by which county tax assessor identifies property .....
Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here:..... or describe the property in as much detail as possible.

Attach additional sheets if necessary.)
.....
.....
.....
.....
.....
.....
Record Owner(s).....
.....
.....
Estimated Value:.....
Lienholders: .....
(1) Name ..... Current Balance .....
Address .....
(2) Name ..... Current Balance .....
Address .....
(3) Name..... Current Balance .....
Address .....
(4) If others, attach additional pages.

9. That I wish to claim the following life insurance policies whose sole beneficiaries are (my wife) (my children) (my wife and children) as exempt:

Name of Insurer	Policy Number	Face Value	Beneficiary(ies)
.....			
.....			
.....			

10. That I wish to claim the following items of health care aid necessary for (myself) (my dependents) to work or sustain health:

Item	Purpose	Person using item
.....		
.....		
.....		

11. That I wish to claim the following implements, professional books, or tools (not to exceed $500), of my trade or the trade of my dependent. I understand that such property purchased within 90 days of this proceeding is not exempt:

Item	Estimated Value
.....	
.....	
.....	

12. That I wish to claim the following personal property consisting of household furnishings, household goods, wearing apparel, appliances, books, animals, crops or musical instruments as exempt

from the claims of my creditors. I affirm, that these items of personal property are held primarily for my personal, family or household use or for such use by my dependents.

I understand that I am entitled to personal property worth the sum of $2,500. I understand that I am also entitled to $500 for each person dependent on me for support, but not to exceed $2,000 for dependents. I further understand that I am entitled to this amount after deduction from the value of the property the amount of any valid lien or purchase money security interest and that property purchased within 90 days of this proceeding is not exempt.

Item (or class) of Property	Amount of Lien or Security Interest	Location	Estimated Value of Debtor's Interest
.....	.....	.....	.....
.....	.....	.....	.....
.....	.....	.....	.....

13. That I wish to claim my interest in the following motor vehicle as exempt from the claims of my creditors. I understand that I am entitled to my interest in a motor vehicle worth the sum of $1,000 after deduction of the amount of any valid liens or purchase money security interest. I understand that a motor vehicle purchased within 90 days of this proceeding is not exempt.

Make and Model of Motor Vehicle	Year	Name(s) of Title Owner of Record	Name(s) of Lien Holder(s) of Record	Estimated Value of Debtor's Interest
.....	....	.....	.....	.....

14. That I wish to claim as exempt the following compensation which I received for the personal injury of myself or a person upon whom I was dependent for support or compensation which I received for the death of a person upon whom I was dependent for support. I understand that this compensation is not exempt from claims for funeral, legal, medical, dental, hospital or health care charges related to the accident or injury which resulted in the payment of the compensation to me.

(a) amount of compensation .....

(b) method of payment: lump sum or installments .....

(If installments, state amount, frequency and duration of payments)

.....

(c) name and relationship to debtor of person(s) injured or killed giving rise to compensation .....

(d) location of compensation if received in lump or installments...

.....

(e) unpaid debts arising out of the injury or death giving rise to compensation .....

Name and Address	Services Rendered	Amount of Debt
.....	.....	.....
.....	.....	.....

15. That I wish to claim the following property as exempt because I claimed residential real or personal property as exempt that is worth less than $2,500 or I made no claim for a residential exemption under section (8) above. I understand that I am entitled to $2,500 in any property only if I made no claim under section (8) above and that if I make a claim under section (8) above, that I am entitled to $2,500 in any property minus any amount I claimed under section (8). (Examples: claim of $1,000 under section (8), $1,500 allowed here; claim of $2,450 under section (8), $50 allowed here; claim of $2,600 under section (8), no claim allowed here.) I further understand that the amount of my claim under this section is after the deduction from the value of this property of the amount of any valid lien or purchase money security interests and that tangible personal property purchased within 90 days of this proceeding is not exempt.

~~Property Location~~	~~Amount of Liens or Purchase Money Security Interests~~	~~Estimated Value of Debtor's Interest~~
.....		
.....		
.....		
.....		

PERSONAL PROPERTY:

Property Location	Amount of Liens or Purchase Money Security Interests	Value of Debtor's Interest
.....	.....	.....
.....	.....	.....
.....	.....	.....
.....	.....	.....

REAL PROPERTY (I understand that if I wish to claim more than one parcel exempt, I must attach additional pages setting forth the following information for each parcel claimed exempt):

Property Location

County ..... Township.....

Street Address .....

Legal Description:

Number by which county tax assessor identifies property
.....
.....
Description (Attach a copy of your deed or other instrument of conveyance that describes the property and indicate here: ..... or describe the property in as much detail as possible.
Attach additional sheets if necessary.)
.....
.....
.....
.....
.....
.....

Record Owner(s): .....
.....
.....
.....
.....
.....
Estimated Value:.....
Lienholders:
(1) Name ..... Current Balance.....
Address .....
(2) Name ..... Current Balance .....
Address .....
(3) Name.....Current Balance.....
Address.....
(4) If others, attach additional pages.

16. That the following is a complete listing of all of my assets which I have not claimed as exempt under any of the preceding paragraphs:

Item	Location	Estimated value
.....	.....	.....
.....	.....	.....
.....	.....	.....

This the .... day of ....., 19.....

.....
Judgment Debtor

Sworn to and Subscribed before
me this .... day of ....., 19.....
.....
Notary Public My Commission Expires:".

Sec. 2. G.S. 1C-1604 reads as rewritten:

"*§ 1C-1604. Effect of exemption.*

(a) Property allocated to the debtor as exempt is free of the enforcement of the claims of creditors for indebtedness incurred before or after the exempt property is set aside, other than claims exempted by G.S. 1C-1601(e), for so long as the debtor owns it. When the property is conveyed to another, the exemption ceases as to liens attaching prior to the conveyance. Creation of a security interest in the property does not constitute a conveyance within the meaning of this section, but a transfer in satisfaction of, or for the enforcement of, a security interest is a conveyance. When exempt property is conveyed, the debtor may have other exemptions allotted. ~~The statute of limitation on judgments is suspended for the period of exemption, as to the property which is exempt.~~

(a1) The statute of limitations on judgments is suspended for the period of exemption as to the property which is exempt. However, the statute of limitations is not suspended as to the exempt property unless the judgment creditor shall have, prior to the expiration of the statute of limitations, recorded a copy of the order designating exempt property in the office of the register of deeds in the county where the exempt real property is located.

(b) Exempt property which passes by bequest, devise, intestate succession or gift to a dependent spouse, child or person to whom the debtor stands in loco parentis, continues to be exempt while held by that person. The exemption is terminated if the spouse remarries, or, with regard to a dependent, when the court determinates that dependency no longer exists."

Sec. 3. This act becomes effective October 1, 1991. For one year from October 1, 1991, upon application of either the judgment debtor or judgment creditor, the clerk of superior court may amend any order previously entered for the purpose of more specifically describing exempt property. If the statute of limitations expires on a judgment lien as to exempt property and, but for the provisions of this act, it would not have expired, the statute of limitations is suspended for one year from October 1, 1991, to allow a judgment creditor to file with the register of deeds a copy of an order designating exempt property.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 332 **CHAPTER 608**

AN ACT TO CONFORM THE LAW REGARDING THE GOVERNOR'S APPOINTMENTS TO THE GOVERNOR'S

ADVOCACY COUNCIL FOR PERSONS WITH DISABILITIES TO FEDERAL LAW.

The General Assembly of North Carolina enacts:

Section 1. G.S. 143B-403.2 reads as rewritten:

"§ *143B-403.2. Governor's Advocacy Council for Persons with Disabilities -- members; selection; quorum; compensation.*

(a) The Governor's Advocacy Council for Persons with Disabilities of the Department of Administration shall consist of ~~24 members. The composition of the Council shall be as follows: six "ex officio" members from State government agencies as follows: the Commissioner of Labor, the Commissioner of Insurance, the Secretary of the Department of Human Resources, the Chairman of the Employment Security Commission, or their designees, the Exceptional Children's Director of the Department of Public Education, and the Chairman of the Protection and Advocacy for the Mentally Ill Advisory Committee of the Governor's Advocacy Council for Persons with Disabilities. The Governor shall appoint 16 members, at least eight shall be disabled persons or family members of disabled persons, with representation as follows: two representatives of persons with mental illness, two representatives of persons with developmental disabilities, two representatives of persons with mental retardation, and one representative of persons with sensory impairment.~~ 21 members, appointed as follows:

(1) Seven members appointed by the Governor;

(2) Seven members appointed by the General Assembly upon the recommendation of the President of the Senate;

(3) Seven members appointed by the General Assembly upon the recommendation of the Speaker of the House of Representatives.

(b) Of the members appointed to the Council, at least 12 shall be disabled persons or family members of disabled persons, with representation as follows:

(1) One representative of persons associated with substance abuse, one representative of persons with sensory impairment, one representative of persons with physical disabilities, one person who shall serve as Chair of the Protection and Advocacy for the Mentally Ill Advisory Committee of the Governor's Advocacy Council for Persons with Disabilities, to be appointed by the Governor;

(2) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness and one representative of persons with sensory impairment, to be

appointed upon recommendation of the President of the Senate; and

(3) One representative of persons with mental retardation, one representative of persons with developmental disabilities, one representative of persons with mental illness, and one representative of persons with physical disabilities, to be appointed upon recommendation of the Speaker of the House of Representatives.

Appointments to the Council under the provisions of this subsection shall be made after consultation with and consideration of recommendations from statewide advocacy and membership organizations associated with persons covered by the federal Developmental Disabilities Assistance and Bill of Rights and the Protection and Advocacy for Mentally Ill Individuals Act.

(c) Members appointed to fit the representative categories shall be initially appointed as terms expire and as vacancies occur, until all categories are filled. ~~The General Assembly shall appoint two members in accordance with G.S. 120-121, one upon the recommendation of the Speaker of the House of Representatives, and one upon the recommendation of the President of the Senate.~~ Vacancies in appointments made by the General Assembly shall be filled in accordance with G.S. 120-122. ~~The Governor shall appoint at least one person from each congressional district in accordance with G.S. 147-12(3)b.~~ An administrator in any branch of State government that delivers services to persons with disabilities is not eligible for membership on the ~~Council except as 'ex officio' members.~~ Council.

(d) The initial term for ~~one half~~ three of the members appointed by the Governor shall be two years. The initial term for the remaining members appointed by the Governor shall be four years. At the end of the respective terms of office of the initial members of the Council, the appointment of all members ~~with the exception of those from State agencies,~~ shall be for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Council created by the resignation, dismissal, death, or disability of a member shall be filled within 60 days after the date on which the vacancy occurs and shall be for the balance of the unexpired term. The initial members appointed by the General Assembly shall serve for terms to expire June 30, ~~1983,~~ 1993. Subsequently, members appointed by the General Assembly shall serve two-year terms beginning July 1, ~~1983,~~ 1993, and biennially thereafter.

The Governor may remove any member of the Council appointed by the Governor.

The Governor shall designate one member of the Council to serve as ~~chairman~~ chair and one member to serve as ~~vice-chairman~~ vice-chair. ~~at his pleasure.~~

Members of the Council shall receive per diem and necessary travel and subsistence expenses in accordance with the provisions of G.S. 138-5.

A majority of the Council shall constitute a quorum for the transaction of business.

All clerical and other services required by the Council shall be supplied by the Secretary of Administration."

Sec. 2. This act becomes effective August 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 413 **CHAPTER 609**

AN ACT TO INCREASE THE FINES FOR LITTERING AND TO CLARIFY THE STATUTES RELATING TO LITTERING.

The General Assembly of North Carolina enacts:

Section 1. G.S. 14-399 reads as rewritten:

"§ *14-399. Littering.*

(a) No person, including but not limited to, any firm, organization, private corporation, or governing body, agents or employees of any municipal corporation shall intentionally or recklessly throw, scatter, spill or place or intentionally or recklessly cause to be blown, scattered, spilled, thrown or placed or otherwise dispose of any litter upon any public property or private property not owned by him within this State or in the waters of this State including, but not limited to, any public highway, public park, lake, river, ocean, beach, campground, forest land, recreational area, trailer park, highway, road, street or alley except:

(1) When such property is designated by the State or political subdivision thereof for the disposal of garbage and refuse, and such person is authorized to use such property for such purpose; or

(2) Into a litter receptacle in such a manner that the litter will be prevented from being carried away or deposited by the elements upon any part of such private or public property or waters.

(b) When litter is blown, scattered, spilled, thrown or placed from a vehicle or watercraft, the operator thereof shall be presumed to have committed such offense. This presumption, however, does not apply to a vehicle transporting agricultural products or supplies when the litter

from that vehicle is a nontoxic, biodegradable agricultural product or supply.

(c) Any person who violates this section in an amount not exceeding 15 pounds ~~or 27 cubic feet~~ and not for commercial purposes is guilty of a misdemeanor punishable by a fine of not less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) nor more than ~~two hundred dollars ($200.00)~~ five hundred dollars ($500.00) for the first offense. Any second or subsequent offense is punishable by a fine of not less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) nor more than ~~five hundred dollars ($500.00).~~ one thousand dollars ($1,000). ~~Notwithstanding the foregoing, any person who violates this section by disposing, in any manner, of litter not exceeding 15 pounds or 27 cubic feet not for commercial purposes upon a beach is guilty of a misdemeanor punishable by a fine of not less than fifty dollars ($50.00) nor more than five hundred dollars ($500.00) for a first or any subsequent offense.~~ In addition, the court may require the violator to pick up litter or perform other labor commensurate with the offense committed.

(d) Any person who violates this section in an amount exceeding 15 pounds ~~or 27 cubic feet,~~ but not exceeding 500 pounds ~~in weight or 100 cubic feet in volume,~~ and not for commercial ~~purposes,~~ purposes is guilty of a misdemeanor punishable by a fine of not less than ~~fifty dollars ($50.00)~~ one hundred dollars ($100.00) nor more than ~~five hundred dollars ($500.00).~~ one thousand dollars ($1,000). In addition, the court shall require the violator to pick up litter or perform other community service commensurate with the offense committed. ~~Further, if the violation involves the use of a motor vehicle, upon a finding of guilt, regardless of whether adjudication is withheld or of whether imposition of sentence is withheld, deferred, or suspended, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this subsection.~~

(e) Any person who violates this section in an amount exceeding 500 pounds ~~or 100 cubic feet~~ or in any quantity for commercial purposes, or ~~dumps~~ who discards litter ~~which~~ that is a hazardous waste as defined in G.S. 130A-290 is guilty of a Class J felony. In addition, the court may order the violator to:

(1) Remove, or render harmless, the litter that he ~~dumped~~ discarded in violation of this section;

(2) Repair or restore property damaged by, or pay damages for any damage arising out of, his ~~dumping~~ discarding litter in violation of this section; or

(3) Perform community public service relating to the removal of litter ~~dumped~~ discarded in violation of this section or to the restoration of an area polluted by litter ~~dumped~~ discarded in violation of this section.

(f) A court may enjoin a violation of this section.

(f1) If a violation of this section involves the operation of a motor vehicle, upon a finding of guilt, the court shall forward a record of the finding to the Department of Transportation, Division of Motor Vehicles, which shall record a penalty of one point on the violator's drivers license pursuant to the point system established by G.S. 20-16. There shall be no insurance premium surcharge or assessment of points under the classification plan adopted pursuant to G.S. 58-30.4 for a finding of guilt under this section.

(g) A motor vehicle, vessel, aircraft, container, crane, winch, or machine involved in the disposal of more than 500 pounds ~~or more than 100 cubic feet~~ of litter in violation of this section is declared contraband and is subject to seizure and summary forfeiture to the State.

(h) If a person sustains damages arising out of a violation of this section that is punishable as a felony, a court, in a civil action for such damages, shall order the person to pay the injured party threefold the actual damages or two hundred dollars ($200.00), whichever amount is greater. In addition, the court shall order the person to pay the injured party's court costs and attorney's fees.

(i) For the purpose of the section, unless the context requires otherwise:

(1) 'Aircraft' means a motor vehicle or other vehicle that is used or designed to fly, but does not include a parachute or any other device used primarily as safety equipment.

(2) 'Commercial vehicle' means a vehicle that is owned or used by a business, corporation, association, partnership, or sole proprietorship or any other entity conducting business for economic gain.

(3) 'Law enforcement officer' means any officer of the North Carolina Highway Patrol, the Division of Motor Vehicles of the Department of Transportation, a county sheriff's department, a municipal law enforcement department, a law enforcement department of any other political subdivision, the Department, or the North Carolina Wildlife Resources Commission. In addition, and solely for the purposes of this section, 'law enforcement officer' means any employee of a

county or municipal park or recreation department designated by the department head as a litter enforcement officer; or wildlife protectors as defined in G.S. 113-128(9);

(4) 'Litter' means any garbage, rubbish, trash, refuse, can, bottle, box, container, wrapper, paper, paper product, tire, appliance, mechanical equipment or part, building or construction material, tool, machinery, wood, motor vehicle or motor vehicle part, vessel, aircraft, farm machinery or equipment, sludge from a waste treatment facility, water supply treatment plant, or air pollution control facility, dead animal, or discarded material in any form resulting from domestic, industrial, commercial, mining, agricultural, or governmental operations. 'Litter' does not include political pamphlets, handbills, religious tracts, newspapers, and other such printed materials the unsolicited distribution of which is protected by the Constitution of the United States or the Constitution of North Carolina.

(5) 'Vehicle' has the same meaning as in G.S. 20-4.01(49); and

(6) 'Watercraft' means any boat or vessel used for transportation across the water.

(j) It shall be the duty of all law enforcement officers to enforce the provisions of this section.

(k) This section does not limit the authority of any State or local agency to enforce other laws, rules or ordinances relating to litter or solid waste management."

Sec. 2. G.S. 7A-148(a) reads as rewritten:

"(a) The chief district judges of the various district court districts shall meet at least once a year upon call of the Chief Justice of the Supreme Court to discuss mutual problems affecting the courts and the improvement of court operations, to prepare and adopt a uniform schedule of traffic offenses, littering under G.S. 14-399(c), hunting and fishing offenses under Chapter 113, boating offenses under Chapter 75A, and alcohol offenses under Chapter 18B for which magistrates and clerks of court may accept written appearances, waivers of trial or hearing and pleas of guilty or admissions of responsibility, and establish a schedule of penalties or fines therefor, and to take such further action as may be found practicable and desirable to promote the uniform administration of justice."

Sec. 3. This act becomes effective 1 October 1991 and applies to violations that occur on or after that date.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 417 **CHAPTER 610**

AN ACT TO AUTHORIZE AN ACTION UNDER THE CHAPTER OF LAW CONCERNING DIVORCE AND ALIMONY TO PROTECT THE PROPERTY OF AN INCOMPETENT SPOUSE BUT TO PREVENT THE ENTRY OF A DIVORCE DECREE ON BEHALF OF THE INCOMPETENT AS RECOMMENDED BY THE GENERAL STATUTES COMMISSION.

Whereas, the decision to obtain a divorce is a personal decision and one that should only be made by the individual involved; and

Whereas, an incompetent spouse may for religious or other personal reasons have objections to the entry of a divorce on his or her behalf; and

Whereas, the General Assembly recognizes a need to protect the property rights of an incompetent spouse; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 50 of the General Statutes is amended by adding a new section to read:

"*§ 50-22. Action on behalf of an incompetent.*

A general guardian for an incompetent spouse may commence, defend or maintain any action authorized by this Chapter; however, the court shall not enter a decree of absolute divorce in such an action filed by the guardian on behalf of the incompetent spouse. As an exception to G.S. 50-21, the court may order equitable distribution on behalf of an incompetent spouse without entering a decree of divorce after the parties have lived separate and apart for a period of one year. Provided, however, that the competent spouse may seek and obtain a divorce from the incompetent spouse upon showing basis for the same."

Sec. 2. G.S. 50-21(a) reads as rewritten:

"(a) At any time after a husband and wife begin to live separate and apart from each other, a claim for equitable distribution may be filed, either as a separate civil action, or together with any other action brought pursuant to Chapter 50 of the General Statutes, or as a motion in the cause as provided by G.S. 50-11(e) or (f). During the pendency of any such action for equitable distribution, discovery may proceed, and the court may enter temporary orders as appropriate and necessary for the purpose of preventing the disappearance, waste, or destruction of marital or separate property or to secure the possession thereof.

A judgment for an equitable distribution shall not be entered prior to entry of a decree of absolute divorce, except as provided in G.S.

50-22 and except for a consent judgment, which may be entered at any time during the pendency of the action.

Real or personal property located outside of North Carolina is subject to equitable distribution in accordance with the provisions of G.S. 50-20, and the court may include in its order appropriate provisions to ensure compliance with the order of equitable distribution."

Sec. 3. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 433 **CHAPTER 611**

AN ACT TO REGULATE MULTIPLE EMPLOYER WELFARE ARRANGEMENTS THAT ARE NOT SUBJECT TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT.

The General Assembly of North Carolina enacts:

Section 1. Article 49 of Chapter 58 of the General Statutes is amended by adding the following new sections:

"*§ 58-49-35. Multiple employer welfare arrangements; license required; penalty.*

(a) It is unlawful to operate, maintain, or establish a MEWA unless the MEWA has a valid license issued by the Commissioner. Any MEWA operating in this State without a valid license is an unauthorized insurer.

(b) G.S. 58-49-30 through 58-49-65 do not apply to a MEWA that offers or provides benefits that are fully insured by an authorized insurer or to a MEWA that is exempt from state insurance regulation in accordance with the Employee Retirement Income Security Act of 1974, Public Law Number 43-406.

"*§ 58-49-40. Qualifications for licensure.*

(a) To meet the requirements for issuance of a license and to maintain a MEWA, a MEWA must be:

(1) Nonprofit;

(2) Established by a trade association, industry association, or professional association of employers or professionals that has a constitution or bylaws and that has been organized and maintained in good faith for a continuous period of five years for purposes other than that of obtaining or providing insurance;

(3) Operated pursuant to a trust agreement by a board of trustees that has complete fiscal control over the MEWA and that is responsible for all operations of the MEWA.

Except as provided in this subdivision, the trustees must be owners, partners, officers, directors, or employees of one or more employers in the MEWA. With the Commissioner's approval, a person who is not such an owner, partner, officer, director, or employee may serve as a trustee if that person possesses the expertise required for such service. A trustee may not be an owner, officer or employee of the administrator or service company of the MEWA. The trustees have the authority to approve applications of association members for participation in the MEWA and to contract with an authorized administrator or service company to administer the operations of the MEWA;

(4) Neither offered nor advertised to the public generally; and

(5) Operated in accordance with sound actuarial principles.

(b) The MEWA shall issue to each covered employee a policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided. The evidence of benefits and coverages provided shall contain, in boldface print in a conspicuous location, the following statement: 'THE BENEFITS AND COVERAGES DESCRIBED HEREIN ARE PROVIDED THROUGH A TRUST FUND ESTABLISHED BY A GROUP OF EMPLOYERS [name of MEWA]. EXCESS INSURANCE IS PROVIDED BY A LICENSED INSURANCE COMPANY TO COVER HIGH AMOUNT MEDICAL CLAIMS. THE TRUST FUND IS NOT SUBJECT TO ANY INSURANCE GUARANTY ASSOCIATION, ALTHOUGH THE TRUST FUND IS MONITORED BY THE NORTH CAROLINA DEPARTMENT OF INSURANCE. OTHER RELATED FINANCIAL INFORMATION IS AVAILABLE FROM YOUR EMPLOYER OR FROM THE [name of MEWA].' If applicable, the same documents shall contain, in boldface print in a conspicuous location, the following statement: 'PARTICIPATING EMPLOYERS WILL BE RESPONSIBLE FOR FUNDING ALL CLAIMS INCURRED BY EMPLOYEES COVERED UNDER THE TRUST.' Any statement required by this subsection is not required on identification cards issued to covered employees or other insureds.

(c) Each MEWA shall maintain excess insurance written by an insurer authorized to do business in this State with a retention level determined in accordance with sound actuarial principles. Such contracts must be filed with the Commissioner and contain notification provisions requiring at least 60 days' notice to the Commissioner from the insurer issuing such coverage prior to the termination or modification of such coverage. The Commissioner may by rule

prescribe net retentions levels for MEWAs in accordance with the number of risks insured.

(d) Each MEWA shall establish and maintain appropriate loss reserves determined in accordance with sound actuarial principles.

(e) The Commissioner shall not grant or continue a license to any MEWA if the Commissioner deems that any trustee, manager, or administrator is incompetent, untrustworthy, or so lacking in insurance expertise as to make the operations of the MEWA hazardous to the potential and existing insureds; that any trustee, manager, or administrator has been found guilty of or has pled guilty or no contest to a felony, a crime involving moral turpitude, or a crime punishable by imprisonment of one year or more under the law of any State or country, whether or not a judgment or conviction has been entered; that any trustee, manager, or administrator has had any type of insurance license revoked in this or any other state; or that the business operations of the MEWA are or have been characterized, to the detriment of the employers participating in the MEWA, of persons receiving benefits from the MEWA, or of creditors or the public, by the improper manipulation of assets, accounts, or excess insurance or by bad faith.

(f) To qualify for and retain a license, a MEWA shall file all contracts with administrators or service companies with the Commissioner, and report any changes to such contracts to the Commissioner in advance of their implementation.

(g) Failure to maintain compliance with the eligibility requirements established by this section is a ground for denial, suspension, or revocation of the license of a MEWA.

"*§ 58-49-45. Certain words prohibited in name of MEWA.*

No licensed MEWA shall use in its name, contracts, literature, advertising in any medium, or any other printed matter the words 'insurance', 'casualty', 'surety', 'mutual', or any other words descriptive of the insurance business or deceptively similar to the name or description of any insurer doing business in this State.

"*§ 58-49-50. Filing of application.*

An association sponsoring a MEWA shall file with the Commissioner an application for a license on a form prescribed by the Commissioner and signed under oath by officers of the association. The application shall include or have attached the following:

(1) A copy of the articles of incorporation, constitution, and bylaws of the association;

(2) A list of the names, addresses, and official capacities with the MEWA of the individuals who will be responsible for the management and conduct of the affairs of the MEWA, including all trustees, officers, and directors. Such

individuals shall fully disclose the extent and nature of any contracts or arrangements between them and the MEWA, including possible conflicts of interest.

(3) A copy of the articles of incorporation, bylaws, or trust agreement that governs the operation of the MEWA.

(4) A copy of the policy, contract, certificate, summary plan description, or other evidence of the benefits and coverages provided to covered employees, including a table of the rates charged or proposed to be charged for each form of such contract. An actuary who is a member of the American Academy of Actuaries or the Society of Actuaries and has experience in establishing rates for a self-insured trust and health services being provided, shall certify that:

a. The rates are neither inadequate, nor excessive, nor unfairly discriminatory.

b. The rates are appropriate for the classes of risks for which they have been computed.

c. An adequate description of the rating methodology has been filed with the Commissioner and such methodology follows consistent and equitable actuarial principles.

(5) A copy of a fidelity bond, in an amount determined by rules adopted by the Commissioner, issued in the name of the MEWA and covering any individuals managing or handling the funds or assets of the MEWA. In no case may the bond be less than fifty thousand dollars ($50,000) or more than five hundred thousand dollars ($500,000).

(6) A copy of the MEWA's excess insurance agreement.

(7) A feasibility study, made by an independent qualified actuary and an independent certified public accountant with an opinion acceptable to the Commissioner, that addresses market potential, market penetration, market competition, operating expenses, gross revenues, net income, total assets and liabilities, cash flow, and other items as the Commissioner requires. The study shall be for the greater of three years or until the MEWA has been projected to be profitable for 12 consecutive months. The study must show that the MEWA would not, at any month end of the projection period, have less than the reserves as required by G.S. 58-49-40(d).

(8) A copy of an audited financial statement of the MEWA reflecting the minimum statutory reserve as required by G.S. 58-49-40(d).

(9) Evidence satisfactory to the Commissioner showing that the MEWA will be operated in accordance with sound actuarial principles. The Commissioner shall not approve the MEWA unless it is determined that the MEWA is designed to provide sufficient revenues to pay current and future liabilities, as determined in accordance with sound actuarial principles.

(10) A copy of every contract between the MEWA and any administrator or service company.

(11) Such additional information as the Commissioner may require.

"*§ 58-49-55. Examinations; deposits; solvency regulation.*

(a) The provisions of Articles 2, 5, and 30 of this Chapter regarding examinations, deposits, and supervision and receivership respectively apply to MEWAs. The provisions of Article 62 of this Chapter and of Article 8B of Chapter 105 of the General Statutes do not apply to MEWAs.

(b) An audit or examination of a MEWA shall be conducted only when there are circumstances to support a reasonable belief of a MEWA's noncompliance with this Article.

"*§ 58-49-60. Annual reports; actuarial certifications; quarterly reports.*

(a) Every MEWA shall, within 150 days after the end of each of its fiscal years or within any such extension of time that the Commissioner for good cause grants, file a report with the Commissioner, on forms prescribed by the Commissioner and verified by the oath of a member of the board of trustees and by an administrative executive appointed by the board, showing its financial condition on the last day of the preceding fiscal year. The report shall contain an audited financial statement of the MEWA prepared in accordance with statutory accounting principles, including its balance sheet and a statement of the operations for the preceding fiscal year certified by an independent certified public accountant. The report shall also include an analysis of the adequacy of reserves and contributions or premiums charged, based on a review of past and projected claims and expenses.

(b) In addition to the information called for and furnished in connection with the annual report, if reasonable grounds exist, the Commissioner may request information that summarizes paid and incurred expenses and contributions or premiums received; and may request evidence satisfactory to the Commissioner that the MEWA is actuarially sound. That information and evidence shall be furnished by the MEWA not later than 30 days after the request, unless the Commissioner, for good cause, grants an extension.

(c) Annually, in conjunction with the annual report required in subsection (a) of this section, the MEWA shall submit an actuarial certification prepared by an independent qualified actuary that indicates:

(1) The MEWA is actuarially sound, with the certification considering the rates, benefits, and expenses of, and any other funds available for the payment of obligations of, the MEWA;

(2) The rates being charged and to be charged for contracts are actuarially adequate to the end of the period for which rates have been guaranteed;

(3) Incurred but not reported claims and claims reported but not fully paid have been adequately provided for; and

(4) Such other information relating to the performance of the MEWA that is required by the Commissioner.

(d) If reasonable grounds exist, the Commissioner may require a MEWA to file quarterly, within 45 days after the end of each of its fiscal quarters, an unaudited financial statement on a form prescribed by the Commissioner, verified by the oath of a member of the board of trustees and an administrative executive appointed by the board, showing its financial condition on the last day of the preceding quarter.

(e) Any MEWA that fails to file a report as required by this section is subject to G.S. 58-2-70; and after notice and opportunity for hearing, the Commissioner may suspend the MEWA's authority to enroll new insureds or to do business in this State while the failure continues.

"*§ 58-49-65. Denial, suspension, or revocation of license.*

(a) The Commissioner shall deny, suspend, or revoke a MEWA's license if the Commissioner finds that the MEWA:

(1) Is insolvent;

(2) Is using such methods and practices in the conduct of its business as to render its further transaction of business in this State hazardous or injurious to its participating employers, covered employees and dependents, or to the public;

(3) Has failed to pay any final judgment rendered against it in a court of competent jurisdiction within 60 days after the judgment became final;

(4) Is or has been in violation of or threatens to violate any provision of this Article;

(5) Is no longer actuarially sound; or

(6) Is charging rates that are excessive, inadequate, or unfairly discriminatory.

(b) The Commissioner may deny, suspend, or revoke the license of any MEWA if the Commissioner determines that the MEWA:

(1) Has violated any lawful order or rule of the Commissioner; or any applicable provision of this Article; or

(2) Has refused to produce its accounts, records, or files for examination under G.S. 58-49-55 or through any of its officers has refused to give information with respect to its affairs or to perform any other legal obligation as to an examination.

(c) Whenever the financial condition of the MEWA is such that, if not modified or corrected, its continued operation would result in impairment or insolvency, in addition to any provisions in Article 30 of this Chapter, the Commissioner may order the MEWA to file with the Commissioner and implement a corrective action plan designed to do one or more of the following:

(1) Reduce the total amount of present potential liability for benefits by reinsurance or other means.

(2) Reduce the volume of new business being accepted.

(3) Reduce the expenses of the MEWA by specified methods.

(4) Suspend or limit the writing of new business for a period of time.

If the MEWA fails to submit a plan within the time specified by the Commissioner or submits a plan that is insufficient to correct the MEWA's financial condition, the Commissioner may order the MEWA to implement one or more of the corrective actions listed in this subsection.

(d) The Commissioner shall, in the order suspending the authority of a MEWA to enroll new insureds, specify the period during which the suspension is to be in effect and the conditions, if any, that must be met prior to reinstatement of its authority to enroll new insureds. The order of suspension is subject to rescission or modification by further order of the Commissioner before the expiration of the suspension period. Reinstatement shall not be made unless requested by the MEWA; however, the Commissioner shall not grant reinstatement if it is found that the circumstances for which suspension occurred still exist."

Sec. 2. The title of Article 49 of Chapter 58 of the General Statutes reads as rewritten:

"Determination of Jurisdiction Over Providers of Health Care ~~Benefits.~~ Benefits; Regulation of Multiple Employer Welfare Arrangements."

Sec. 3. G.S. 58-49-30 reads as rewritten:

"§ *58-49-30. Multiple employer welfare arrangements; definition; administrators.* ~~*registration; reports to the Commissioner.*~~

(a) As used in this section, the term 'multiple employer welfare arrangement' or 'MEWA' means that term as defined in Section 3 of the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1002(40)(A), as amended, that meets either or both of the following criteria:

(1) One or more of the employer members of the MEWA is either domiciled in this State or has its principal headquarters or principal administrative office in this State.

(2) The MEWA solicits an employer that is domiciled in this State or that has its principal headquarters or principal administrative office in this State.

~~(b) Every MEWA and every administrator of a MEWA shall register with the Commissioner in order to do business in this State. Such registration must be renewed each year thereafter on the anniversary date of the initial registration.~~

(c) Each insurer licensed to do business in this State that administers a MEWA shall, ~~in lieu of registration,~~ at the request of the Commissioner, provide the Commissioner with such information regarding the insurer's administrative services contract or contracts with such MEWA or MEWAs that the Commissioner requires. No unlicensed insurer shall administer any MEWA.

~~(d) All MEWAs shall, at the time they file report with the U.S. Department of Labor pursuant to 29 U.S.C. §§1022 and 1023, file verified copies of such reports with the Commissioner. The provisions of G.S. 58-2-180 apply to the making such reports.~~

~~(e) The provisions of this section are in addition to all other statutory provisions of Articles 1 through 64 of this Chapter and do not supersede, amend, or repeal such provisions.~~"

Sec. 4. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 498 **CHAPTER 612**

AN ACT TO ESTABLISH THE QUALIFICATIONS FOR THE POSITION OF LOCAL HEALTH DIRECTOR.

The General Assembly of North Carolina enacts:

Section 1. G.S. 130A-40 reads as rewritten:

"§ *130A-40. Appointment of local health director.*

(a) A local board of health, after consulting with the appropriate county board or boards of commissioners, shall appoint a local health director. ~~The State Personnel Commission, after consulting with the Commission for Health Services, shall establish qualifications for a~~

~~local health director. The qualifications shall give equal emphasis to education and experience. However, a local health director shall not be required to be a physician.~~ All persons who are appointed to the position of local health director on or after January 1, 1992, must possess minimum education and experience requirements for that position, as follows:

(1) A medical doctorate; or

(2) A masters degree in Public Health Administration, and at least one year of employment experience in health programs or health services; or

(3) A masters degree in a public health discipline other than public health administration, and at least three years of employment experience in health programs or health services; or

(4) A masters degree in public administration, and at least two years of experience in health programs or health services; or

(5) A masters degree in a field related to public health, and at least three years of experience in health programs or health services; or

(6) A bachelors degree in public health administration or public administration and at least three years of experience in health programs or health services.

(b) Before appointing a person to the position of local health director under subsection (a)(5) of this section, the local board of health shall forward the application and other pertinent materials of such candidate to the State Health Director. If the State Health Director determines that the candidate's masters degree is in a field not related to public health, the State Health Director shall so notify the local board of health in writing within 15 days of the State Health Director's receipt of the application and materials, and such candidate shall be deemed not to meet the education requirements of subsection (a)(5) of this section. If the State Health Director fails to act upon the application within 15 days of receipt of the application and materials from the local board of health, the application shall be deemed approved with respect to the education requirements of subsection (a)(5) of this section, and the local board of health may proceed with appointment process.

(c) The State Health Director shall review requests of educational institutions to determine whether a particular masters degree offered by the requesting institution is related to public health for the purposes of subsection (a)(5) of this section. The State Health Director shall act upon such requests within 90 days of receipt of the request and pertinent materials from the institution, and shall notify the institution of its determination in writing within the 90-day review period. If the

State Health Director determines that an institution's particular masters degree is not related to public health, the State Health Director shall include the reasons therefor in his written determination to the institution.

(d) When a local board of health fails to appoint a local health director within 60 days of the creation of a vacancy, the State Health Director may appoint a local health director to serve until the local board of health appoints a local health director in accordance with this section."

Sec. 2. This act becomes effective January 1, 1992.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 544 **CHAPTER 613**

AN ACT CREATING CIVIL PENALTIES FOR BUYING OR SELLING NON-TAX-PAID FUEL.

The General Assembly of North Carolina enacts:

Section 1. Article 36 of Chapter 105 is amended by adding a new section to read:

"*§ 105-441.1. Civil penalty for buying or selling non-tax-paid motor fuel.*

(a) Penalty. -- A person who dispenses non-tax-paid motor fuel into the supply tank of a motor vehicle or who allows non-tax-paid motor fuel to be dispensed into the supply tank of a motor vehicle is subject to a civil penalty. The penalty is based on the amount of motor fuel dispensed and is set at the following amounts:

Number of Gallons Dispensed	Penalty
Less than 25	$ 75
At least 25 but less than 50	$150
At least 50	$300.

The penalty is payable to the Department of Transportation, Division of Motor Vehicles, or the Department of Revenue. Failure to pay a penalty imposed under this section is grounds under G.S. 20-88.01(b) to withhold or revoke the registration plate of the motor vehicle into which the motor fuel was dispensed.

(b) Hearing. -- A person who denies liability for a penalty imposed under this section must pay the penalty under protest and make a written demand to the Department of Revenue for a refund. The written demand must be made within 30 days after the penalty is imposed. Upon receiving a demand for a refund, the Secretary shall schedule a hearing on the matter before an employee or an agent of the Department. The hearing must be held within 30 days after

receiving the written demand for a refund. If, after the hearing, the Department determines that the person was not liable for the penalty, the amount collected shall be refunded. If after the hearing the Department determines that the person was liable for the penalty, the person paying the penalty may appeal the imposition of the penalty in accordance with G.S. 105-241.2, 105-241.3, and 105-241.4.

(c) Proceeds. -- Amounts collected under this section shall be credited to the Highway Fund."

Sec. 2. G.S. 105-445 reads as rewritten:

"§ *105-445. Application of proceeds of gasoline tax.*

Seventy-five percent (75%) of the tax revenue collected under this Article shall be credited to the Highway Fund and the remaining twenty-five percent (25%) shall be credited to the Highway Trust Fund. A proportionate share of a refund allowed under this Article shall be charged to the Highway Fund and the Highway Trust Fund so that seventy-five percent (75%) of the amount of a refund is charged to the Highway Fund and twenty-five percent (25%) is charged to the Highway Trust Fund."

Sec. 3. G.S. 105-449.24 reads as rewritten:

"§ *105-449.24. ~~Exemptions and refunds.~~ Exemptions, refunds, and civil penalties.*

The exemptions from and the refunds of the tax levied by Article 36 on motor fuel apply to the tax levied by this Article on fuel, except the exemption and refund for losses in G.S. 105-434(a). The civil penalty under G.S. 105-441.1 for dispensing non-tax-paid motor fuel applies to dispensing non-tax-paid fuel. The civil penalty for dispensing non-tax-paid fuel shall be applied in the same manner as the penalty for dispensing non-tax-paid motor fuel."

Sec. 4. G.S. 20-88.01 reads as rewritten:

"§ *20-88.01. Revocation of registration for failure to register for or comply with road ~~tax.~~ tax or pay civil penalty for buying or selling non-tax-paid fuel.*

(a) Road Tax. -- The Secretary of Revenue may notify the Commissioner of those motor vehicles that are registered or are required to be registered under Article 36B of Chapter 105 and whose owners or lessees, as appropriate, are not in compliance with Article 36A or 36B of Chapter 105. When notified, the Commissioner shall withhold or revoke the registration plate for the vehicle.

(b) Non-tax-paid Fuel. -- The Secretary of Revenue may notify the Commissioner of those motor vehicles for which a civil penalty imposed under G.S. 105-441.1 or G.S. 105-449.24 has not been paid. When notified, the Commissioner shall withhold or revoke the registration plate of the vehicle."

Sec. 5. This act becomes effective October 1, 1991.

In the General Assembly read three times and ratified this the 9th day of July, 1991.

H.B. 701 **CHAPTER 614**

AN ACT TO ELIMINATE LEGISLATIVE APPOINTMENTS TO THE BOARD OF EDUCATION FOR THE PUBLIC SCHOOLS OF ROBESON COUNTY, TO PROVIDE FOR EIGHT SINGLE-MEMBER DISTRICTS, AND FOR THREE MEMBERS TO BE ELECTED AT LARGE WITH LIMITED VOTING.

The General Assembly of North Carolina enacts:

Section 1. Section 4 of Chapter 605, Session Laws of 1987, reads as rewritten:

"Sec. 4. Upon merger, the existing Robeson County and Fairmont, Lumberton, Red Springs, and St. Pauls City Boards of Education and the Interim Board are abolished and replaced by the Board of Education for the Public Schools of Robeson County. The Board of Education for the Public Schools of Robeson County shall consist of the 15 members of the Interim Board as of the effective date of the merger, and shall have all the powers and responsibilities previously provided for the Robeson County, Fairmont City, Lumberton City, Red Springs City, St. Pauls City, and Interim Boards and provided by State law generally for county boards of education. From July 1, 1989, through June 30, 1992, the Board shall have 15 members. From and after July 1, 1992, the Board shall have ~~13~~ 11 members."

Sec. 2. Section 7.1 of Chapter 605, Session Laws of 1987, reads as rewritten:

"Sec. 7.1. In 1990, the General Assembly shall appoint four members of the Board of Education for the Public Schools of Robeson County, two for four-year terms beginning July 1, 1990, and two for two-year terms beginning July 1, 1990. ~~In 1992 and biennially thereafter, the General Assembly shall appoint two members of the Board of Education for the Public Schools of Robeson County for four-year terms.~~ Effective July 1, 1992, those seats are abolished and the terms expire."

Sec. 3. Effective July 1, 1992, Section 9 of Chapter 605, Session Laws of 1987, reads as rewritten:

"Sec. 9. Vacancies on the Board of Education for the Public Schools of Robeson County shall be filled by the remaining members of the Board~~, except in the case of appointments made by the General Assembly under Section 7.1 of this act the appointee shall serve until the remainder of the unexpired term or until the General Assembly~~

~~fills the vacancy, whichever occurs first~~. In the case of a district seat, the Board must appoint a resident of that district."

Sec. 4. Section 5.1 of Chapter 605, Session Laws of 1987 reads as rewritten:

"Sec. 5.1. (a) Elections for the Board of Education for the Public Schools of Robeson County shall be held at the same time as the primary election for county officers as established by G.S. 163-1.

(a1) The elections for the eight district seats shall be conducted on a non-partisan basis, with the results determined by plurality in accordance with G.S. 163-292.

(a2) Three members of the Board of Education for the Public Schools shall be elected at large on a non-partisan basis by all the qualified voters of Robeson County in 1992 and quadrennially thereafter for four-year terms. The election for those at-large seats shall be with limited voting, whereby each voter will be entitled to vote for one candidate, and the top three vote getters will be elected by a plurality of votes.

(a3) Except as otherwise provided by this act, elections shall be held in accordance with the applicable provisions of Chapter 115C and Chapter 163 of the General Statutes.

(b) Not later than October 1, 1991, the Board of Education for the Public Schools of Robeson County shall divide Robeson County ~~is divided~~ into eight electoral districts ~~as set forth in subsection (c) of this section~~; provided that the districts may be adjusted thereafter if the plan is not approved under section 5 of the Voting Rights Act of 1965. Each district shall consist of contiguous territory, and the 1990 Federal Census shall be used. Each candidate for an electoral district seat must reside in the district for which he is to be elected, and only the qualified voters of the district may vote for the election of that district seat.

~~(c) Districts:~~

~~(1) District 1 consists of Lumberton Precincts 1, 2, 3, and 8, Census BNA9901p of Lumberton Township outside Lumberton City, and Enumeration District 433A of Lumberton Township (excepting that part within District 7).~~

~~(2) District 2 consists of Lumberton Precinct 6, Enumeration District 434A of Lumberton Township (excepting that part within District 7), Back Swamp Township, Enumeration Districts 447 and 448 of Union Township, and Enumeration Districts 461A and 461B of Fairmont Township.~~

~~(3) District 3 consists of Lumberton Precincts 4 and 5, Enumeration District 435A of Lumberton Township, Wisharts Township, Britts Township, and East Howellsville Township.~~

~~(4) District 4 consists of the remainder of Fairmont Township not in District 2, Orrum Township, Smyrna Township, Sterling Township, Marietta Township, and Gaddy Township.~~

~~(5) District 5 consists of Thompson Township, Rowland Township, Alfordsville Township, and Maxton Township.~~

~~(6) District 6 consists of Pembroke Township and Enumeration District 449 of Union Township.~~

~~(7) District 7 consists of Lumberton Precinct 7, the areas within Enumeration Districts 433A and 434A consisting of the right-of-way of North Carolina Highways 72/711 from the Raft Swamp Township Line to the Lumberton City Limits as of January 1, 1980, Raft Swamp Township, Burnt Swamp Township, Saddletree Township, Enumeration District 423 of Smiths Township, and Philadelphus Township.~~

~~(8) District 8 consists of Enumeration District 422 of Smiths Township, Red Springs Township, Rennert Township, and Shannon Township.~~

~~(9) District 9 consists of Lumber Bridge Township, Parkton Township, St. Pauls Township, and West Howellsville Township.~~

~~(d) As used in subsection (d), enumeration districts are as found in the 1980 Federal Census. If any area in a Lumberton Precinct is in Enumeration Districts 433A, 434A, or 435 of Lumberton Township, then for the purpose of subsection (c) of this section that territory shall be in the district in which the enumeration district is located.~~

(e) ~~In 1990 and quadrennially thereafter, members shall be elected from districts 3, 5, 7, and 8 for four-year terms. In 1992 and quadrennially thereafter, members shall be elected from districts 1, 2, 4, 6, and 9 for four-year terms.~~ In the districting plan it adopts, the Board of Education shall provide for members to be elected from four of the districts in 1992 and quadrennially thereafter for four-year terms, and shall provide for members to be elected from the other four of the districts in 1994 and quadrennially thereafter for four-year terms. If the district plan so established provides that the domicile of a person elected in 1990 for a four-year term is in a district that is subject to election in 1992, then that person may run for that district seat in 1992 or may run for an at-large seat in 1992, without being subject to G.S. 163-125."

Sec. 5. This act does not affect the terms of office of members elected in 1990.

Sec. 6. This act is effective upon ratification.

In the General Assembly read three times and ratified this the 9th day of July, 1991.